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DD/A Registry
File *Personnel 16*

19 SEP 1974

MEMORANDUM FOR: Acting Legislative Counsel
FROM : Director of Security
SUBJECT : Proposed Executive Order
Occupational Safety and Health
Programs for Federal Employees

In accordance with your request, representatives of the Office of Security and the Office of Medical Services have reviewed the proposed Executive Order. It is the consensus of both offices that the proposed order, as written, is acceptable to this Agency.

STATINTL


Charles W. Kane
Director of Security

Distribution:
Orig & 1 - Adse
2 - DDA
1 - D/MS



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

GENERAL COUNSEL

September 11, 1974

Honorable William E. Colby
Director
Central Intelligence Agency
Washington, D. C. 20505

Dear Mr. Colby:

Herewith, in accordance with the provisions of Executive Order No. 11030, as amended, is a proposed Executive order entitled "Occupational Safety and Health Programs for Federal Employees."

This proposed Executive order was presented by the Secretary of Labor. Two earlier drafts of this proposed Executive order were submitted for your comments. This draft accommodates as many of the comments of the various departments and agencies as is deemed appropriate, and we propose to forward it, through the Attorney General, for the consideration of the President. Unless we receive advice to the contrary by September 19, 1974, we will assume that your agency has no objection to issuance of this proposed Executive order.

Sincerely,

Stanley Ebner
General Counsel

Enclosures

U. S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY

WASHINGTON

SEP 9 1974

Honorable Roy L. Ash
Director, Office of
Management and Budget
Washington, D. C. 20503

Dear Mr. Ash:

After several months of intensive discussions between our respective staffs, this Department has prepared a new draft of a proposed Executive Order on Occupational Safety and Health Programs for Federal employees to supersede E.O. 11612. Copies of the draft Order are enclosed for your consideration.

As set forth in the preamble of this draft, the proposed Order would provide for appropriate guidance and assistance to agency heads by the Secretary of Labor, so that they may more effectively carry out their statutory responsibilities to establish and maintain effective and comprehensive occupational safety and health programs which are consistent with the safety and health standards promulgated by the Secretary of Labor and applicable to private employment. Guidelines already prepared by this Department, after extensive public comment and consultation with the Federal Safety Advisory Council, will be transmitted to you shortly so that they may be issued simultaneously with the new Order upon Presidential approval.

Commitment by the Administration to the safety and health needs of Federal employees requires that attention be given to the resources necessary to operate successful agency programs. An appropriate means for ensuring this attention is OMB Circular A-11, which provides instructions

- 2 -

to policy on the preparation and submission of budget estimates. We are advised that your office has decided to use the General Policy section of Circular A-11 for budget estimates for Fiscal Year 1977 and therefore to include an instruction to agencies that budget estimates shall reflect full consideration of Administration and agency responsibilities for the safety and health of Federal employees. Express reference to such matters in prior drafts of the proposed Executive Order have therefore been deleted as superfluous. We hope consideration will also be given to emphasizing this new General Policy Statement in the memorandum of transmittal which will accompany the next revision of Circular A-11 so as to clearly bring the matter to the attention of agency heads.

Drafts of the proposed Order and the guidelines prepared by this Department have now been in circulation for more than a year. We are pleased that the way now appears clear for submission of this Order to the President so that agencies which have already seen fit to develop new programs based upon the drafts will be able to place them in operation. Issuance of this Order by September 30, the date on which the President has been invited to address the 29th Annual Federal Safety Conference, which is being held in conjunction with the 1974 National Safety Congress, would be a most appropriate way of asserting this Administration's dedication to the safety and health of Federal employees.

Sincerely,



Secretary of Labor

ROUTING AND RECORD

SUBJECT: (C)

FROM:

Acting Legislative Counsel

EXTENSION

NO.

DATE

11 September 1974

STAT

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

DDA 7D18

9/13/74

D

It is requested that you review the attached proposed Executive Order, "Occupational Safety and Health Programs for Federal Employees." If you have any comments, please submit to this office as soon as possible. Note that if we do not comment to OMB by September 19, they will assume we have no objection.

STATINTL

Assistant Legislative Counsel

cc: OGC

1-3 I believe earlier action was taken on this or a similar proposal. In any case, please route your response through DDA — or at least give us a drop copy —

EO/DA

Suspense: 18 Sept 74

STATINTL

EXECUTIVE ORDER

OCCUPATIONAL SAFETY AND HEALTH PROGRAMS
FOR FEDERAL EMPLOYEES

The Occupational Safety and Health Act of 1970, 84 Stat. 1590, authorizes the development and enforcement of standards to assure safe and healthful working conditions for employees in the private sector. The Act contains special provisions applying to those who work for the Federal Government. Section 19 of the Act assigns to each Federal agency head the responsibility for establishing and maintaining an effective and comprehensive occupational safety and health program which is consistent with the safety and health standards promulgated by the Secretary of Labor and applicable to private employment.

As the Nation's largest employer, the Federal Government has a special obligation to set an example for safe and healthful employment. After more than three years of experience under Executive Order No. 11612, it is clear that greater efforts are necessary if this goal is to be achieved. It is therefore necessary that a new order be issued to reflect this Nation's firm and renewed commitment to provide exemplary working conditions for those devoted to the public service.

The provisions of this order are intended to ensure that each agency head is provided with the guidance necessary to implement an effective agency occupational safety and health program. Further, in order that the President may be kept fully informed on agency progress in this effort, including any problems which may hinder the achievement of our goal, this order provides for detailed evaluations by the Secretary of Labor of the occupational safety and health programs of all agencies,

and for the periodic transmittal of these evaluations, together with agency responses thereto, to the President. In addition, in view of its demonstrated value as an advisory body to the Secretary of Labor on the Federal occupational safety and health program, the Federal Safety Advisory Council is continued by this order as the Federal Safety Advisory Council on Occupational Safety and Health, pursuant to 5 U.S.C. 7902 and the Federal Advisory Committee Act.

Experience has also shown that agency heads need and desire more detailed guidance by the Secretary of Labor to help establish and operate effective occupational safety and health programs. This order therefore provides that the Secretary of Labor shall issue detailed guidelines, and provide such further assistance to agency heads as they may request from time to time. Guidelines already developed by the Secretary of Labor, after extensive public comment and consultation with the Federal Safety Advisory Council, are being issued simultaneously with this order. Under this order, heads of Federal agencies will administer safety and health programs considering their individual sizes and organizations, consistent with the objectives of the Act and observing these and any future guidelines of the Secretary of Labor.

NOW, THEREFORE, by virtue of the authority vested in me by section 7902 of Title 5 of the United States Code to establish a safety council, and as President of the United States, it is hereby ordered as follows:

SCOPE OF THIS ORDER

SECTION 1. For the purposes of this order, the term "agency" means an Executive Department, as defined in 5 U.S.C. 101, or any employing unit or authority of the Government of the United States not within an Executive Department. This order shall be applicable to all agencies of the Executive Branch of the Government; and by agreement

between the Secretary of Labor and the head of an agency of the Legislative or Judicial Branches of the Government, the provisions of this order may be made applicable to such agencies. In addition, by agreement between the Secretary of Labor and the head of any agency, and to the extent permitted by law, the provisions of this order may be extended to employees of agencies who are employed in geographic locations to which the Occupational Safety and Health Act of 1970 is not applicable.

DUTIES OF HEADS OF AGENCIES

SECTION 2. The head of each agency shall, after consultation with representatives of the employees thereof, establish and maintain an occupational safety and health program meeting the requirements of section 19 of the Act. In order to ensure that agency programs are consistent with the standards prescribed by section 6 of the Act, the head of each agency shall --

(a) Designate or appoint, to be responsible for the management and administration of the agency occupational safety and health program, an agency official with sufficient authority to represent effectively the interest and support of the agency head.

(b) Establish an occupational safety and health management information system, which shall include the maintenance of such records of occupational accidents, injuries, illnesses and their causes, and the compilation and transmittal of such reports based upon this information, as the Secretary of Labor may require pursuant to section 3 of this order.

(c) Establish procedures for the adoption of agency occupational safety and health standards consistent with the standards promulgated by the Secretary of Labor pursuant to section 6 of the Act; assure prompt attention to reports by employees or others of unsafe or unhealthful working

conditions; assure periodic inspections of agency workplaces by personnel with sufficient technical competence to recognize unsafe and unhealthful working conditions in such workplaces; and assure prompt abatement of unsafe or unhealthful working conditions, including those involving facilities and/or equipment furnished by another Government agency, informing the Secretary of significant difficulties encountered in this regard.

(d) Provide adequate safety and health training for officials at the different management levels, supervisory employees, employees responsible for conducting occupational safety and health inspections, and other employees. Such training shall include dissemination of information as to the operation of the agency occupational safety and health program and as to the means by which each such person may participate and assist in the operation of that program.

(e) Submit to the Secretary on an annual basis a report containing such information as the Secretary shall prescribe.

(f) Cooperate with and assist the Secretary of Labor in the performance of his duties under section 19 of the Act and section 3 of this order.

(g) Observe, considering the mission, size and organization of the agency, the guidelines published by the Secretary of Labor pursuant to section 3 of this order, which, among other things, detail the responsibilities of agency heads under this order.

DUTIES OF THE SECRETARY OF LABOR

SECTION 3. The Secretary of Labor shall provide leadership and guidance to the heads of agencies to assist them in fulfilling their occupational safety and health responsibilities by, among other means, taking the following actions:

(a) Issue guidelines to assist agencies in establishing and operating effective occupational safety and health programs appropriate to their individual missions, sizes, and organizations. Such guidelines shall reflect the requirement of section 19 of the Act for consultation with employee representatives.

(b) Prescribe recordkeeping and reporting requirements to enable agencies to assist the Secretary of Labor in meeting the requirements imposed upon him by section 24 of the Act.

(c) Provide such consultation to agencies as he deems necessary and appropriate to ensure that agency standards adopted pursuant to section 2 of this order are consistent with the safety and health standards adopted by the Secretary pursuant to section 6 of the Act; provide leadership and guidance to agencies in the adequate occupational safety and health training of agency personnel; and facilitate the exchange of ideas and information throughout the Government with respect to matters of occupational safety and health through such arrangements as he deems appropriate.

(d) Perform for agencies, where he deems necessary and appropriate, the following services, upon request and reimbursement for the expenses thereof: (1) evaluate agency working conditions, and recommend to the agency head appropriate standards to be adopted pursuant to section 2 of this order to ensure that such working conditions are safe and healthful; (2) conduct inspections to identify unsafe or unhealthful working conditions, and provide assistance to correct such conditions; (3) train appropriate agency safety and health personnel.

(e) Evaluate the occupational safety and health programs of agencies, and submit to the President reports of such evaluations together with agency responses thereto. These evaluations will be conducted at least once annually

for agencies employing more than 1,000 persons within the geographic locations to which the Act applies, and as the Secretary deems appropriate for all other agencies, through such headquarters or field reviews as the Secretary of Labor deems necessary.

(f) Submit to the President each year a summary report of the status of the Federal agency occupational safety and health program, as well as analyses of individual agency progress and problems in correcting unsafe and unhealthful working conditions together with recommendations for improving their performance.

FEDERAL ADVISORY COUNCIL ON OCCUPATIONAL
SAFETY AND HEALTH

SECTION 4. (a) The Federal Safety Advisory Council established pursuant to Executive Order No. 11612 shall be continued as the Federal Advisory Council on Occupational Safety and Health to advise the Secretary of Labor in carrying out his responsibilities under this order. This Council shall consist of fifteen members appointed by the Secretary of Labor and shall include representatives of Federal agencies and of labor organizations representing employees. At least five members shall be representatives of such labor organizations. The members shall serve for three-year terms, with the terms of five members expiring each year, provided that this Council is renewed every two years in accordance with the Federal Advisory Committee Act. The members of the Federal Safety Advisory Council established pursuant to Executive Order No. 11612 shall be deemed to be the initial members of the Council established by this order, and their terms shall expire in accordance with the terms of their appointments.

(b) The Secretary of Labor, or his designee, shall serve as the Chairman of the Council, and shall prescribe such rules for the conduct of its business as he deems necessary and appropriate.

(c) The Secretary of Labor shall make available necessary office space and furnish the Council necessary equipment, supplies, and staff services, and make such reports as are appropriate under the Federal Advisory Committee Act.

EFFECT ON OTHER POWERS AND DUTIES

SECTION 5. Nothing in this order shall be construed to impair or alter the powers and duties of the Secretary or the heads of other Federal agencies pursuant to section 19 of the Occupational Safety and Health Act of 1970, sections 7901, 7902, and 7903 of Title 5 of the United States Code, or any other provision of law, nor shall it be construed to alter the provisions of Executive Order No. 11491, as amended, Executive Order No. 11636, or other provisions of law providing for collective bargaining agreements and procedures. Matters of official leave for employee representatives involved in activities pursuant to this order shall be determined between each agency and these representatives pursuant to the procedures provided by Executive Order No. 11491, as amended, Executive Order No. 11636, or other collective bargaining agreements.

TERMINATION OF EXISTING ORDER

SECTION 6. Executive Order No. 11612 of July 26, 1971, is hereby superseded.

THE WHITE HOUSE

Approved For Release 2002/06/05 : CIA-RDP79-00498A000500150008-2

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503



GENERAL COUNSEL

September 11, 1974

Honorable William E. Colby
Director
Central Intelligence Agency
Washington, D. C. 20505

Dear Mr. Colby:

Herewith, in accordance with the provisions of Executive Order No. 11030, as amended, is a proposed Executive order entitled "Occupational Safety and Health Programs for Federal Employees."

This proposed Executive order was presented by the Secretary of Labor. Two earlier drafts of this proposed Executive order were submitted for your comments. This draft accommodates as many of the comments of the various departments and agencies as is deemed appropriate, and we propose to forward it, through the Attorney General, for the consideration of the President. Unless we receive advice to the contrary by September 19, 1974, we will assume that your agency has no objection to issuance of this proposed Executive order.

Sincerely,

Stanley Ebner
General Counsel

Enclosures

STATINTL

Approved For Release 2002/06/05 : CIA-RDP79-00498A000500150008-2

Approved For Release 2002/06/05 : CIA-RDP79-00498A000500150008-2

5 FEB 1974

MEMORANDUM FOR: Deputy Director for Management
and Services

FROM : Director of Security

SUBJECT : Proposed Executive Order on
Occupational Safety and Health
Program for Federal Employees

1. Action Requested: It is requested that you sign and forward the attached letter to Mr. Stanley Ebner, General Counsel for the Office of Management and Budget. It is our response to a request for comments on a proposed Executive Order on an Occupational Safety and Health Program for Federal Employees.

2. Background: The proposed Order, a copy of which is attached, is intended to supersede EO No. 11612. The new Order is somewhat more detailed and is apparently intended to further implement the Occupational Safety and Health Act of 1970. Also attached is a copy of the Department of Labor's proposed regulatory guidelines, 36 FR 27070.

3. Staff Position: The suggested changes incorporated in our letter to Mr. Ebner have been concurred with in draft by the Office of General Counsel, Office of Legislative Counsel, Office of Medical Services and Office of the Comptroller. The draft copy is forwarded herewith.

4. Recommendation: It is recommended that you sign and mail the attached letter to Mr. Ebner.



Howard J. Osborn
Director of Security

STATINTL

Atts

SUBJECT: Proposed Executive Order on
Occupational Safety and Health
Program for Federal Employees

Distribution:

Orig - Return to OS

2 - DD/M&S

1 - ER (added)

7 FEB 1974

Mr. Stanley Ebner, General Counsel
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Ebner:

As requested in your letter to Mr. Colby of 15 January 1974, we have reviewed the draft of the proposed Executive Order entitled Occupational Safety and Health Programs for Federal Employees. We are, of course, very much in favor of the Occupational Safety and Health Act of 1970 and in providing a safe work place for our employees. Our specific comments follow.

We suggest a change in the language of Section 1(a) of the proposed EO to reflect the realities of the management systems of most agencies. We would strike the last line of subsection (a) and substitute "have a direct channel of communication." We believe this would accomplish the apparent goal of ensuring sufficient status for the program while at the same time providing for its orderly administration.

Additionally, we suggest a change in Section 1(m) to reflect certain unique requirements placed on this Agency by the National Security Act of 1947, as amended, and other Federal statutes. In line 4 of subsection (m) between "cooperation" and "is" we would like to insert "or other requirement of this order". In line 5 of the same subsection between "by" and "Executive" we would insert "statute or". We believe the requested changes are necessary to permit our compliance with this particular subsection.

Finally, we wish to comment on Section 1(b) of the draft and on the Department of Labor's answer to your question number 3 from the attachment to your

letter of 15 January 1974. We are of the opinion that we now have an "effective" safety and health program with "sufficient" funds and "necessary" staff. We feel constrained to state, however, that if we are required to comply with the letter of every section of the proposed EO we will require additional funding and manpower.

We appreciate the opportunity which you have provided us to review the proposed Executive Order. We hope that the Order with the suggested revisions can soon be presented to the President for his signature.

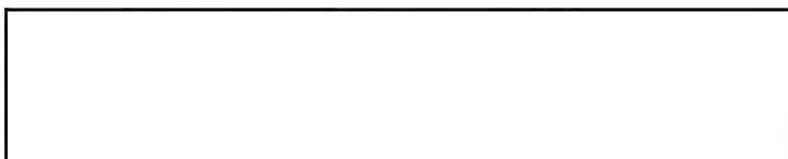
Sincerely,

/s/
Harold L. Brownman
Deputy Director
for
Management and Services

SUBJECT: Proposed Executive Order on
Occupational Safety and Health
Programs for Federal Employees

ORIGINATOR:

STATINTL



Howard S. Osborn
Director of Security

5 FEB 1974

Date

Distribution:

Orig & 1 - Addressee
2 - DD/M&S
1 - D/Sec
1 - ER (added)

STATINTL

Approved For Release 2002/06/05 : CIA-RDP79-00498A000500150008-2

Approved For Release 2002/06/05 : CIA-RDP79-00498A000500150008-2

DRAFT

EBNER,

Mr. Stanley ~~Elmer~~, General Counsel
Office of Management and Budget
Washington, D. C. 20503

EBNER

Dear Mr. ~~Elmer~~:

As requested in your letter to Mr. Colby of 15 January 1974,

we have reviewed the draft of the proposed Executive Orderⁱⁿ titled
Occupational Safety and Health Programs for Federal Employees.

We are, of course, very much in favor of the Occupational Safety
and Health Act of 1970 and in providing a safe work place for our
employees. Our specific comments follow.

We suggest a change in the language of Section 1. (a) of the
proposed E. O. to reflect the realities of the management systems
of most agencies. We would strike the last line of subsection (a)
and substitute "have a direct channel of communication." We
believe this would accomplish the apparent goal of ensuring sufficient
status for the program while at the same time providing for its
orderly administration.

HP

Additionally, we suggest a change in Section 1. (m) to reflect certain unique requirements placed on this Agency by the National Security Act of 1947, as amended, and other federal statutes. In line 4 of subsection (m) between "cooperation" and "is" we would like to insert "or other requirement of this order!" In line 5 of the same subsection between "by" and "Executive" we would insert "statute or". We believe the requested changes are necessary to permit our compliance with this particular subsection.

Finally, we wish to comment on Section 1(b) of the draft ~~In our opinion we have in this Agency a viable and effective occupa-~~
~~tional safety and health program.~~ *and on* Having considered the Department of Labor's answer to your question number 3 from the attachment to your letter of 15 January 1974, *✓* We are of the opinion that we now have an "effective" safety and health program with "sufficient" funds

and "necessary" staff. We feel constrained to state, however, that if we are required to comply with the letter of every section of the proposed E. O. we will require additional funding and manpower.

We appreciate the opportunity which you have provided us to review the proposed Executive Order. We hope that the Order with the suggested revisions can soon be presented to the President for his signature.

Sincerely,

Harold L. Brownman
Deputy Director
for
Management and Services

STATINTL

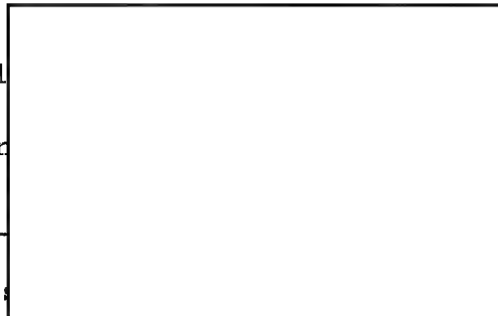
Concur in Draft:

Office of General Counsel

Office of Legislative Counsel

Office of the Comptroller

Office of Medical Services



(Telephone
OAS)

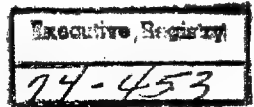
STATINTL

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Approved For Release 2002/06/05 : CIA-RDP79-00498A000500150008-2

74-0254

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503



January 15, 1974

Honorable William E. Colby
Central Intelligence Agency
Washington, D. C. 20505

Dear Mr. Colby:

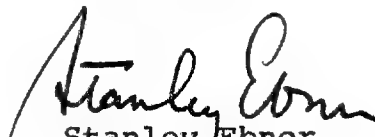
Herewith, in accordance with the provisions of Executive Order No. 11030, as amended, is a proposed Executive order entitled "Occupational Safety and Health Programs for Federal Employees" together with certain related documents.

On October 18, 1973, I requested agency comments on an earlier draft of this proposed Order. In view of the nature and scope of the comments received, that proposed Order was returned to the Department of Labor for reconsideration in light of those comments.

The Department of Labor has submitted a revised draft of the proposed Order. They have also submitted answers to a series of questions, prepared in this Office, concerning the manner in which they visualized the Occupational Safety and Health Program would operate if this proposed Order is issued.

On behalf of the Director of the Office of Management and Budget, I would appreciate receiving any comments that you may have concerning this revised proposed Executive order by January 31, 1974. *J.E.S.*

Sincerely,


Stanley Ebner
General Counsel

Enclosures

STATINTL

Approved For Release 2002/06/05 : CIA-RDP79-00498A000500150008-2

Approved For Release 2002/06/05 : CIA-RDP79-00498A000500150008-2

EXECUTIVE SECRETARIAT
Routing Slip

TO:

		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
3	S/MC				
4	DDS&T				
5	DDI				
6	DDM&S	X			
7	DDO				
8	D/DCI/IC				
9	D/DCI/NIO				
10	OGC		X		
11	OLC		X		
12	IG		X		
13	Compt		X		
14	D/Pers				
15	D/S				
16	DTR				
17	Asst/DCI				
18	AO/DCI				
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less enclosures

SUSPENSE _____
 Date

Remarks: To 6: You may want to touch base with 10 or 13 and get some relief on the 31 Jan deadline.

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20210



11 JAN 1974

JAN 10 1974

Stanley Ebner, General Counsel
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Ebner:

The Department of Labor has completed its review of the comments received by your office from other agencies and from the appropriate operating divisions of OMB on the proposed Executive order entitled "Occupational Safety and Health Programs for Federal Employees," which this Department, in our letter to Mr. Ash on October 16, 1973, has recommended for adoption to supersede Executive Order No. 11612.

Many of the comments on the proposed order expressed confusion as to its intended effect upon the administrative structure within the agency that will carry out the agency safety and health program, upon the agency budgetary process, upon related programs in the Federal sector such as collective bargaining practices and the provision of medical and related health services, and upon the role of the Department of Labor in the Federal program. After a thorough review of these comments, we have revised the language of the proposed order to clarify these matters.

Enclosed is a copy of the revised version of the proposed Executive order, dated December 14, 1973, and seven (7) copies as required by law. Also enclosed is our detailed response to the questions raised by Mr. G. Phillips Hanna, Chief, Labor/Manpower Branch, Human Resources Division of OMB. We are enclosing for Mr. Hanna, a copy of the digest of a report by the GAO on Federal agency safety and health programs, which has played a significant role in formulation of this proposed Executive order, and a copy of our proposed regulatory guidelines, 36 FR 27070. Finally, we are enclosing for your perusal several statements received by this Department from labor unions which are parties to collective bargaining agreements with Federal agencies, expressing support for adoption of the proposed Executive order.

2

We appreciate the opportunity which you have provided for us to review the agency comments on the proposed Executive order, and the opportunity to undertake necessary clarification. We also appreciate the expedited manner in which this matter is being handled, and we hope that the proposed Executive order can soon be presented to the President for his signature.

Sincerely,

A handwritten signature in black ink, appearing to read "William J. Kilberg", written in a cursive style.

William J. Kilberg
Solicitor of Labor

Enclosures

EXECUTIVE ORDER

OCCUPATIONAL SAFETY AND HEALTH PROGRAMS
FOR FEDERAL EMPLOYEES

The Occupational Safety and Health Act of 1970, 84 Stat. 1590, authorizes the development and enforcement of standards to assure safe and healthful working conditions for employees in the private sector. Section 19 of that Act makes each Federal agency head responsible for establishing and maintaining an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated by the Secretary of Labor for businesses affecting interstate commerce.

Section 7902 of Title 5, United States Code, authorizes the President to establish by Executive order a safety council composed of representatives of Federal agencies and of labor organizations representing employees to serve as an advisory body to the Secretary of Labor in carrying out a Federal safety program.

As the Nation's largest employer, the Federal Government has a special obligation to set an example for safe and healthful employment. It is appropriate that the Federal Government strengthen its efforts to assure safe and healthful working conditions for its own employees, and therefore this order is issued to enhance the implementation of the Federal occupational safety and health program, through a detailed and expanded description of the responsibilities for establishing and administering that program.

NOW, THEREFORE, by virtue of the authority vested in me by section 7902 of Title 5 of the United States Code, and as President of the United States, it is hereby ordered as follows:

OCCUPATIONAL SAFETY AND HEALTH
PROGRAMS IN FEDERAL AGENCIES

SECTION 1. The head of each Federal agency shall establish an occupational safety and health program in compliance with the requirements of section 19 of the Occupational Safety and Health Act of 1970. The term "agency" for the purposes of this Executive order means any employing unit or authority of the executive branch of the Government of the United States. The term "employee" as used in this Executive order means any person employed by an "agency" as the latter term is defined in this order, unless excluded by the Secretary of Labor by regulation, decision or otherwise. The programs shall be consistent with the standards prescribed by section 6 of the Occupational Safety and Health Act. In providing occupational safety and health programs for Federal employees, the head of each Federal agency shall --

(a) Designate or appoint an official at the rank of Assistant Secretary or equivalent rank or equivalent degree of responsibility who shall be responsible for the management and administration of the agency occupational safety and health program and to whom the agency's safety and health staff at the headquarters of the agency shall directly and exclusively report.

(b) Take appropriate steps to provide sufficient funds for necessary safety and health staff, equipment, material, and training required to ensure an effective agency occupational safety and health program.

(c) Ensure that each official in charge of an establishment, supervisor, and employee is appropriately

informed of his or her rights and responsibilities under both this Executive order and the agency occupational safety and health program.

(d) Ensure that in any evaluation of employee performance or potential, the excellence or culpable failure of each official in charge of an establishment, supervisor or employee in the performance of his or her occupational safety and health responsibilities is taken into consideration.

(e) Establish (1) an occupational safety and health policy; (2) an organization and set of procedures that will effectively implement the policy; (3) a program of periodic inspections conducted by technically competent personnel; (4) procedures for the submission by employees or representatives of employees of reports containing information regarding alleged unsafe or unhealthful working conditions, and for the prompt evaluation of and response to such reports; (5) appropriate means to ensure employee participation in the organization and implementation of an agency's occupational safety and health program; (6) an occupational safety and health management information system, which shall include adequate records of all occupational accidents, injuries and illnesses, to assist in the proper evaluation and necessary abatement of hazardous working conditions, and to assist the Secretary of Labor in the performance of his responsibilities pursuant to § 24 of the Occupational Safety and Health Act and § 2(c) of this order; (7) goals and objectives for reducing and eliminating occupational accidents, injuries and illnesses; (8) plans and procedures for evaluating the agency's occupational safety

and health program effectiveness at all operational levels; and (9) priorities with respect to the factors which cause occupational accidents, injuries, and illnesses so that appropriate corrective action can be taken.

(f) Adopt as agency occupational safety and health standards the occupational safety and health standards promulgated by the Secretary of Labor pursuant to section 6 of the Occupational Safety and Health Act, to the extent that the agency head, after consultation with the Secretary of Labor, determines that employees of the agency are or might be exposed to working conditions for which such a standard has been promulgated; adopt, after consultation with the Secretary of Labor, any different or supplementary occupational safety and health standards consistent with section 6 standards as special agency occupational safety and health standards for specialized application to the particular working conditions and other related needs of the agency; and establish procedures for the adoption of standards under this subsection, which procedures shall provide for comment by and/or consultation with all interested persons.

(g) Correct conditions that do not meet occupational safety and health standards adopted by the agency.

(h) Ensure that all facilities and equipment occupied and/or used by the agency, including facilities and equipment furnished by another Government agency, will conform to the occupational safety and health standards of the occupying and/or using agency.

(i) When standards adopted by an agency so require, provide medical examinations and maintain medical records,

through a health program conducted under section 7901 of Title 5 of the United States Code or other authority, and acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees, in accordance with the authority of both section 19(a)(2) of the Occupational Safety and Health Act of 1970 and section 7903 of Title 5 of the United States Code.

(j) Provide adequate safety and health training for officials at all levels of management, supervisory employees and other employees.

(k) Submit to the Secretary of Labor by April 1 of each year a report containing: (1) the status of the agency's occupational safety and health program in reducing occupational accidents, injuries and illnesses during the preceding calendar year, including identification of funds actually expended for that year, in terms of the goals and objectives established for that year; (2) goals and objectives for the current year; (3) a plan for achieving those goals and objectives including identification of the funds which the agency plans to use to ensure an effective agency occupational safety and health program; (4) any report required under section 7902(e)(2) of Title 5 of the United States Code; and (5) such other information as may be requested by the Secretary for the purposes of this annual report.

(l) Ensure that as many field units as practicable within an agency are officially represented and actively participate in the programs of field Federal safety councils.

(m) Cooperate with and assist the Secretary of Labor in the performance of the Secretary's duties under section 19 of the Occupational Safety and Health Act of 1970 and section 2 of this order, unless such cooperation is not possible because it is specifically forbidden by Executive order in the interest of National security or foreign policy.

DUTIES OF THE SECRETARY OF LABOR

SEC. 2. The Secretary of Labor (hereinafter referred to as the Secretary) or his designee in the Department of Labor, shall --

(a) Provide leadership and guidance, by regulation or otherwise, to the heads of Federal agencies to assist them in fulfilling their occupational safety and health responsibilities; and, where necessary to enable the Secretary to carry out these responsibilities, seek the authorization of agency heads to obtain such information of agency actions, either by report or investigation, as the Secretary deems necessary.

(b) Provide leadership and guidance to the agencies for the adequate training of officials at all levels of management, supervisors and employees in occupational safety and health matters.

(c) Develop an occupational safety and health management information system to accommodate the data requirements of the Federal agency safety and health program and the requirements of § 24 of the Occupational Safety and Health Act, and prescribe the form and content of agency records and reports necessary for this purpose.

(d) Evaluate the occupational safety and health programs of Federal agencies annually; and, where necessary to enable the Secretary to complete such evaluations, seek the authorization of agency heads to conduct such investigations, at headquarters or in the field, as the Secretary deems necessary.

(e) Submit to the President by August 1 of each year an analysis of the information submitted to him by the heads of agencies. This analysis shall include the Secretary's evaluation of each agency's occupational safety and health program, including evaluation of the agency's record on correcting unsafe or unhealthful working conditions, and shall contain his recommendations for improving occupational safety and health programs throughout the Federal service.

FEDERAL SAFETY ADVISORY COUNCIL

SEC. 3. (a) The Federal Safety Advisory Council established pursuant to Executive Order No. 11612 shall be continued as the Federal Advisory Council on Occupational Safety and Health to advise the Secretary in carrying out his responsibilities under this order. This council shall consist of fifteen members appointed by the Secretary and shall include representatives of Federal agencies and of labor organizations representing employees. At least five members shall be representatives of such labor organizations. The members shall serve for three year terms, with the terms of five members expiring each year, provided that this council is renewed every two years in accordance with the Federal Advisory Committee Act. The members of the Federal Safety Advisory Council established pursuant to Executive Order No. 11612 shall be deemed to be the initial members

of the council established by this order, and their terms shall expire in accordance with the terms of their appointments.

(b) The Secretary, or his designee, shall serve as the Chairman of the Council, and shall prescribe such rules for the conduct of its business as he deems necessary and appropriate.

(c) The council shall meet at the call of its chairman. It may establish such subcommittees as it finds necessary.

(d) The Secretary shall make available necessary office space and furnish the council necessary equipment, supplies, and staff services.

FIELD FEDERAL SAFETY COUNCILS

SEC. 4. The Secretary shall establish and continue field Federal safety councils for the purposes of promoting understanding and coordination of efforts by Federal agencies in occupational safety and health, and to serve as a focal point for problem-solving and assistance among all Federal agencies on a local level. The Secretary shall, by regulation or otherwise, provide leadership and guidance to the field Federal safety councils in fulfilling their responsibilities. The councils will consist of representatives of local area Federal agencies, and of labor organizations representing employees of local area Federal agencies subject to the terms of any agreement adopted pursuant to Executive Order No. 11491.

EXTENSION OF THIS ORDER

SEC. 5. By agreement, the Secretary may extend the applicability of the provisions of this order to agencies in the legislative and judicial branches of the Federal

Government, and to the extent permitted by law, to employees of Federal agencies who are employed in geographic locations to which the Occupational Safety and Health Act of 1970 is not applicable.

EFFECT ON OTHER POWERS AND DUTIES

SEC. 6. Nothing in this order shall be construed to impair or alter the powers and duties of the Secretary or the heads of other Federal agencies pursuant to section 19 of the Occupational Safety and Health Act of 1970, sections 7901, 7902, and 7903 of Title 5 of the United States Code, or any other provision of law, nor shall it be construed to alter the provisions of E. O. No. 11491 or other provisions of law providing for collective bargaining agreements and procedures.

TERMINATION OF EXISTING ORDER

SEC. 7. Executive Order No. 11612 of July 26, 1971, is hereby superseded.

THE WHITE HOUSE

International Brotherhood
of Electrical Workers

Charles H. Pillard
International
President

Joseph D. Keenan
International
Secretary



W 1125-15th St. N.W.
Washington, D.C.
20005

November 5, 1973

John H. Stender
Assistant Secretary of Labor for
Occupational Safety and Health
United States Department of Labor
14th and Constitution Avenue, N. W.
Washington, D. C. 20210

RE: Comparison of E. O. 11612 Covering Occupational Safety and
Health Programs for Federal Employees and Its Current
Proposed Revision

Dear Mr. Stender:

The International Brotherhood of Electrical Workers has always advocated that implementation of Section 19 and by reference therein Section 6, of the "Occupational Safety and Health Act of 1970" is one of the most important objectives of the Federal Government. Consideration by the IBEW of the proposed revisions to Executive Order 11612 has, therefore, evoked the following comments:

It appears that Section 1(1) would be beneficial in that it removes the various levels of responsibility between the official in the agency who is responsible for the overall agency program, and the safety official at the activity level who must deal with the day to day problems. This provision would alleviate the distortion of communication regarding policy, the application of standards, and the processing of complaints and other inherent procedures.

Section 1(2) is consistent with the view of labor that there should be sufficient agency funds allocated for the staff, materials, and equipment to ensure a comprehensive and effective Occupational Safety and Health Program.

The IBEW has always proposed that all information regarding policies, standards, regulations and other pertinent data should be made available to all employees involved in the Program. This should include the distribution of copies of the above to designated Union Representatives at the activity level. Section 1(9) of the revised order provides for the training of all employees, therefore, this information is vital to Union officials in their acceptance of responsibilities in this area. Since Executive Order 11612, and its revised draft make it incumbent upon labor organizations to actively

International Brotherhood
of Electrical Workers

Mr. John H. Stender
November 5, 1973
Page Two

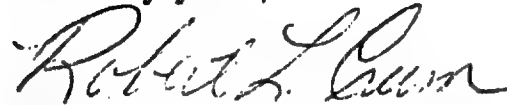
participate in the safety and health programs for Federal Employees it should be recognized that such participation should be accomplished on duty time.

The IBEW feels that the requirement for the Secretary to establish and continue Field Safety Councils, and the provision for representation and participation of labor organizations representing employees of local area Federal Agencies is essential to the success of the total program.

The IBEW, and the AFL-CIO, (as reflected in a policy statement issued by the AFL-CIO Executive Council last February) have proposed that the complaint and enforcement procedures that apply to the Private Sector should also be applied to the Federal Sector. Since this provision is not a practical reality in the revised draft of the Executive Order, the IBEW feels that retention of Section 1(12), Section 2(b) and Section 2(c) of the revised draft are essential. The deletion or weakening of these provisions would only discourage Federal Employees and their representatives, and would add impetus to the needs and desires of Unions representing Federal Employees to seek amendment of the "Occupational Safety and Health Act of 1970" to provide that Federal workplaces be brought under the inspection responsibilities of OSHA as suggested to the United States Senate Committee on Labor and Public Welfare by the Comptroller General of the United States as a result of the review by the General Accounting Office of the implementation of the "Act" in the Federal Agencies safety and health programs.

Finally, the IBEW feels that Section 3, providing for the continuation of the Federal Safety Advisory Council should be retained.

Sincerely yours,



Robert L. Crum

~~International Representative~~

RLC/lj

American Federation of Government Employees

AFFILIATED WITH THE AFL-CIO

CLYDE M. WEBBER
NATIONAL PRESIDENT

DENNIS GARRISON
EXECUTIVE VICE PRESIDENT

DOUGLAS H. KERSHAW
NATIONAL SEC. TREAS.



NATIONAL HEADQUARTERS
1325 MASSACHUSETTS AVE., N.W.
WASHINGTON, D. C. 20005
(202) 737-8700

IN REPLY PLEASE REFER TO:
6b/OSHA

November 5, 1973

John H. Stender
Assistant Secretary of Labor for
Occupational Safety and Health
United States Department of Labor
14th and Constitution Avenue, N.W.
Washington, D. C. 20210

Dear Mr. Stender:

RE: Comparison of E.O. 11612 Covering Occupational Safety and Health Programs for Federal Employees and Its Current Proposed Revision

The American Federation of Government Employees, AFL-CIO, considers the implementation of the Federal aspects of the "Occupational Safety and Health Act of 1970" one of the primary tasks confronting the Federal Government. For this reason, in 1971 the AFGE had dedicated its resources to the establishment by Executive Order of a safety council composed of representatives of Federal agencies and of labor organizations representing employees to serve as an advisory body to the Secretary of Labor in carrying out a Federal Safety Program.

Between January 24-26, 1973, the AFGE National Executive Council unanimously passed several resolutions designed to further effectuate improvements in Executive Order 11612. I am pleased to note in the proposed revision of this Order that many of the major proposals submitted by the AFGE have been incorporated into the proposed draft.

It appears that Section 1(1) is a move in the right direction by providing that the head of each Federal agency shall "designate or appoint an official at the rank of Assistant Secretary or equivalent rank or equivalent degree of responsibility who shall be responsible for the management and administration of the occupational safety and health program within the agency and to whom professional safety and health staff shall directly and exclusively report."

Mr. John H. Stender
November 5, 1973
Page Two

We earlier proposed that "all budget requests include explicit provisions for sufficient appropriations to carry out the provisions of the Act." It is encouraging to read that Sec. 1(2) of the draft provides that the head of each Federal agency shall "Allocate sufficient agency funds for necessary professional safety and health staff, equipment and material required to ensure an effective occupational safety and health program and develop a request for such funds as a specific budgetary item."

We have long advocated that each supervisor and each employee be entitled to access to all information, policies, regulations, standards and other data related to the occupational safety and health program under which he or she worked. Under Sec. 1(3) provision is made to "Ensure that each official in charge of an establishment, supervisor and employee is appropriately informed of his or her rights and responsibilities under both this Executive Order and the agency occupational safety and health program." This provision in conjunction with Sec. 1(4) which provides for appropriate recognition for excellent performance and appropriate discipline for failures to carry out responsibilities should lay the basis for a program for employees to obtain information regarding their rights and responsibilities.

The AFGE has proposed that the complaint procedures and the enforcement procedures that are available to employees of contractors on Federal establishments should be made available to employees of the Federal government, in precisely the same conditions, and in the same workplace. In brief we have recommended that the enforcement procedures that apply to the private sector be applied also in the Federal sector. Sec. 1(5) does not achieve this, even though it sets up a surrogate system to accomplish the basic features of our recommendation. Though we assess this feature of the proposed Executive Order as a progressive step, we would appreciate a further move to give Federal employees the same rights that private enterprise employees have.

The AFGE historically has opposed the language of Sec. 2(a), E.O. 11612 which required prior approval by the Agency for inspection. The proposed revised order does modify the absolute requirement for prior approval by the agency by softening the language to the level of "seeking the consent of the agencies."

Since the Executive Order 11612 and the revised draft imposes upon labor organizations a responsibility for participation in the safety and health programs for Federal employees,

Mr. John H. Stender
November 5, 1973
Page Three

it likewise should provide that such participation be accomplished on duty time. There is no excusable reason to solicitate the attendance, participation, knowledge, and experience of the labor organization representatives, and at the same time, penalize them for carrying out their Executive Order responsibilities by requiring them to take annual leave. The AFGE strongly recommends that labor representatives be on duty time whenever they are involved in safety and health matters as prescribed by Executive Order.

The AFGE has maintained that copies of laws, regulations, manuals, and instructions should be available at local installations to designated Union representatives. Sec. 1(9) of the revised order provides for safety and health training for officials at all levels of management, supervisory employees and other employees. In order to maximize such training and in order to maintain a current posture in the field, all published documentation should be made available to designated union representatives.

With respect to Field Federal Safety Councils, AFGE welcomes Sec. 4 which makes it mandatory for the Secretary to establish and continue field Federal safety councils and which stipulates that these shall consist of representatives of local and Federal agencies and of labor organizations representing employees of local area Federal agencies.

We regret that the change did not further define labor union membership in terms of exclusive recognition proportionate representation and did not assure that an appropriate number would be elected officers of the local safety councils.

We also regret that the proposed new language did not seek to relate the federal safety councils to existing Federal executive boards.

In this connection, we quote completely our AFGE resolutions numbers 5 and 6 on Federal safety councils and on Federal executive boards and the response of the Office of Management and Budget Director Roy Ash to our proposals. These follow immediately hereunder:

AFGE RESOLUTIONS:

5. "The National Office is authorized to propose to the Federal Safety Advisory Council that the 80 existing field Federal safety councils be converted as rapidly as possible into field affiliates of the Federal Safety Advisory Council, under the provisions of Sec. 3(d) of E.O. 11612. The field safety

Mr. John H. Stender
November 5, 1973
Page Four

councils should provide for an appropriate membership of union representatives, who shall be on duty status when attending meetings and who shall be reimbursed for travel expenses and per diem. To assure responsible labor representation, the union representatives on the local committees should be selected by their unions on the basis of the proportional strength of individual unions in the area, as determined by the number of employees they represent in the area under exclusive recognition. The union representatives of the field safety councils should be entitled to an appropriate number of elected officers on the local safety committees."


6. "The National Office is authorized further to propose to the Office of Management and Budget that the 25 existing Federal Executive Boards accept all elected officers of field safety councils as ex officio members of their own safety committees. All work performed by union representatives on the safety committees of the Federal Executive Boards shall be considered compensable official duty, with travel expenses and per diem paid when applicable."

OMB RESPONSES:

5. "The National Office of AFGE is free at any time to make such recommendations as it wishes with respect to field Federal Safety Councils becoming field affiliates of the Federal Safety Advisory Council. We neither support nor object to your action in this regard. However, we again feel that any provisions which provide for a representative of labor should be a negotiable matter between individual agency management and labor."

6. "OMB would interpose no objections to elected officers of field safety councils, who are representatives of employee organizations, being ex officio members of Federal Executive Board safety committees. We would not support, however, their membership on the FEB itself which is strictly a management group designed to assist agency management in carrying out its assigned mission. The question of travel and per diem should be determined bilaterally between the union member and his parent activity."

Sincerely,


Clyde M. Webber
National President

CMW:sp

LETTER CARRIERS' BUILDING
100 INDIANA AVENUE, N. W.
WASHINGTON, D. C. 20001

JAMES H. RADEMACHER
PRESIDENT

AREA CODE 202
EXECUTIVE 3-4696

November 6, 1973

Mr. John H. Stender
Assistant Secretary of Labor
for Occupational Safety and Health
United States Department of Labor
14th and Constitution Avenues, N. W.
Washington, D. C. 20210

Dear Mr. Stender:

The National Association of Letter Carriers, AFL-CIO, wholeheartedly endorse the newly proposed Executive Order covering occupational safety and health for Federal employees. We were particularly pleased to see the following proposed changes from Executive Order 11612.

- each Federal agency shall designate an official at the rank of Assistant Secretary or equivalent who shall have the responsibility for the management of its safety and health program and to whom the safety staff shall directly report.
- each agency shall allocate sufficient funds for the safety staff, equipment and materials required to ensure an effective safety and health program.
- each agency must ensure employee participation in the organization and operation of its safety and health program.
- the field Councils will also consist of representatives of labor organizations representing employees of local Federal agencies.

Mr. John H. Stender

Page Two

The proposed Executive Order, as written, will provide the foundation for a more effective Federal safety and health program. Hopefully, this proposal will soon become a reality.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. Rademacher", written in a cursive style.

James H. Rademacher

JHR:lj1
opeiu #2

U.S. DEPARTMENT OF LABOR
Occupational Safety and Health Administration
WASHINGTON, D.C. 20210



Office of the Assistant Secretary

11 JAN 1974

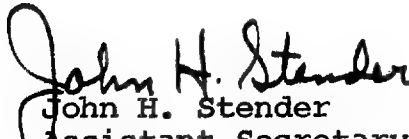
Mr. G. Phillips Hanna
Chief, Labor/Manpower Branch
Human Resources Division
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Hanna:

Enclosed are our responses to the questions you have raised in connection with the proposed Executive order entitled "Occupational Safety and Health Programs for Federal Employees." We hope that the language of the revised version of this proposed order dated December 14, 1973, is also responsive to your inquiries. Please note that the numbering system of section 1 has been altered to promote clarity in citation.

To assist you in evaluating our responses, we are enclosing for your perusal a copy of the digest of a GAO report on the status of the Federal agency safety and health program, which played a significant role in the formulation of the proposed Executive order. We should also like to refer you to our proposed regulatory guidelines, 36 FR 27070, copy enclosed, which "flesh out" the "bones" provided by statute and Executive Order No. 11612. Many of the provisions of those proposed regulatory guidelines will have to be changed to reflect the provisions and refined language of the proposed Executive order if it is adopted, but the Federal Register document will undoubtedly be of some assistance to you in your evaluation, and we make reference to it in our responses to your questions.

Sincerely,


John H. Stender
Assistant Secretary of Labor

Enclosures

*COMPTROLLER GENERAL'S REPORT
TO THE COMMITTEE ON LABOR
AND PUBLIC WELFARE
UNITED STATES SENATE*

**MORE CONCERTED EFFORT
NEEDED BY THE FEDERAL
GOVERNMENT ON OCCUPATIONAL
SAFETY AND HEALTH PROGRAMS
FOR FEDERAL EMPLOYEES**
Department of Labor B-163375

D I G E S T

WHY THE REVIEW WAS MADE

The Committee Chairman requested the General Accounting Office (GAO) to review aspects of the Occupational Safety and Health Act of 1970 being carried out by the Occupational Safety and Health Administration (OSHA), Department of Labor.

This report is the first of a series concerning Federal agency safety and health programs carried out under the act and OSHA's coordination and review of these programs.

As agreed with the Committee, GAO did not give the Department of Labor and various Federal agencies mentioned in the report an opportunity to examine and comment formally on its contents. However, GAO discussed these matters with Department of Labor officials and incorporated their views in the report.

Background

The President has stated that the Federal Government, as the Nation's largest employer, has a special obligation to provide safe and healthful workplaces for Federal employees. The status of safety programs in the Federal Government has been elevated by the Occupational Safety and Health Act of 1970, effective April 1971, and Executive Order 11612 of July 26, 1971.

Section 19 of the act requires

each Federal agency head to establish and maintain an effective and comprehensive occupational safety and health program--consistent with standards promulgated by the Secretary of Labor--and to provide safe and healthful work conditions for Federal employees.

Executive Order 11612 sets forth the criteria for Federal agencies to use in establishing occupational safety and health programs. The order requires the Secretary of Labor to issue regulations to provide guidance to Federal agencies in fulfilling their responsibilities under the act.

The order also established a Federal Safety Advisory Council to consult with and advise the Secretary. The Council consists of 15 members appointed by the Secretary and includes representatives of Federal departments and agencies and labor organizations representing employees.

Federal safety program requirements apply to approximately 120 Federal departments and agencies, and agencies cover about 3 million civilian employees in about 5,000 occupations.

In 1971 the Federal work force suffered about 37,000 disabling injuries and 255 fatalities at an estimated cost of \$118 million for compensation and medical expense. The Labor Department estimates that related property damage costs are

MARCH 15, 1973

between a quarter and a half billion dollars annually.

FINDINGS AND CONCLUSIONS

OSHA has expended time and effort in emphasizing the importance of Federal occupational safety and health programs. Since the act was passed, Federal agencies have taken steps to improve their safety programs. However, much more needs to be done if the Federal Government is to insure that its agencies are complying with the standards it is enforcing in the private sector and to insure safe and healthful conditions in workplaces.

Enforcement and inspection practices

OSHA's enforcement and inspection practices differ significantly between private businesses and Federal agencies. For private businesses OSHA enforces compliance with safety and health standards through inspections and penalties authorized by the act. The act provides that Federal agencies can be inspected only with the consent of the agencies. (See p. 13.)

The act gives the Secretary of Labor access to Federal agencies' records of occupational accidents and illnesses, and Executive Order 11612 authorizes him to evaluate agencies' safety and health programs and to make inspections, but only with the consent of the agency heads.

At the time of GAO's fieldwork, OSHA had evaluated the published safety programs at the headquarters of four Federal agencies and had inspected two Federal workplaces. (See p. 14.)

Federal agency inspection practices

Responses to a GAO questionnaire

from 49 Federal agencies indicated that workplace inspections often varied from a walk-through by a safety official to an inspection which was part of a review involving matters unrelated to safety. Typically, agency personnel conduct the inspections as part-time, collateral duties. (See p. 15.) Three of the 49 agencies used only full-time inspectors, 15 used full-time and part-time inspectors, and 27 used part-time inspectors. Four had no inspection programs. (See p. 15.)

Forty of the 45 agencies having inspection programs documented violations of safety and health standards, and 34 of the 40 maintained inspection records. Eleven did not routinely maintain inspection records, although six did document violations. (See p. 15.)

The time allotted in which officials responsible for safety and health violations are required to take corrective action varied widely among the 49 agencies. The time between initial and followup inspections to determine if corrective action was taken also varied widely. (See p. 15.)

Noncompliance with safety and health standards

GAO inspected workplaces of four Federal agencies in the Washington, D.C., area and found about 200 instances of noncompliance with OSHA's safety and health standards.

Noncompliance included mechanical, electrical, fire, and housekeeping hazards which could seriously injure employees. Other instances related to hazards in the air and workplace environment, such as the presence of toxic substances. About 50 of the instances were sufficiently

severe that, had they been found in private businesses, the businesses would have been subject to monetary penalties assessed by OSHA. (See p. 19.)

Lack of consistency and direction

Of the 49 agencies surveyed, 46 stated that they had occupational safety and health programs. Although many agencies had established the programs before the act was passed, many modified their programs as a result of the act. (See p. 45.) The existing programs, however, lack consistency and overall direction.

The 49 agencies' responses indicated that they had reacted to the act in a variety of ways.

--For those with longstanding programs, the act appeared to cause only minor revisions. (See p. 45.)

--Three reassessed their occupational safety and health activities and made changes. One established its first full-time safety officer. Another established a safety office and a formal safety organization and published an agency safety and health handbook. A third made a comprehensive survey to determine what actions were needed to bring its field installations into compliance. (See p. 45.)

--A number either created occupational safety and health programs or added significant elements to existing programs. (See p. 45.)

--There was much diversity among the agencies' safety and health program components, such as safety policies, organizations, procedures, and workplace surveys. (See p. 46.)

Federal agency safety and health statistics

In the past, statistics on incidence and rate of accidents and illnesses among Federal agency personnel have come from several sources and systems, resulting in inconsistency and unreliability. OSHA has imposed a uniform recording and reporting system on Federal agencies, which is a potential improvement, but a number of problems remain to be overcome. (See p. 50.)

Definitions of job-related incidents and other data inputs must be improved, and incompatibilities in existing agency reporting systems must be remedied. Otherwise, the new system will not avoid past problems. (See p. 51.)

Need for effective leadership role by OSHA

OSHA's leadership in improving Federal agency safety and health programs has been limited and needs to be strengthened. (See p. 54.) The agencies are responsible for developing and implementing Federal agency safety and health programs. In the absence of effective leadership and guidance by OSHA, however, Federal agency programs are likely to continue to lack consistency and overall direction. (See p. 54.)

Since passage of the act, OSHA has expended time and efforts emphasizing the importance of Federal safety and health programs. However, most of OSHA's activities have related largely to matters involving dissemination of information and planning of future efforts. (See p. 54.)

At the time of GAO's review, OSHA had not established and issued regulations required by Executive

Order 11612 to assist heads of Federal departments and agencies in fulfilling their occupational safety and health responsibilities. (See p. 56.)

OSHA has evaluated only a few Federal safety and health programs to determine whether Federal departments and agencies are complying with the act and the Executive order. Consequently, OSHA does not know whether Federal employees are assured of the required safe and healthful working conditions. (See p. 56.)

RECOMMENDATIONS TO THE
SECRETARY OF LABOR

The Secretary of Labor should direct OSHA to take a stronger leadership role in:

- Preparing and issuing regulations to further assist and guide the agencies in developing their safety and health programs.
- Developing a more aggressive and expanded evaluation and inspection program to insure that Federal agencies are making adequate efforts to provide safe and healthful workplaces.
- Continuing to work with Federal agencies to resolve the problems with definitions and to make its new reporting system more compatible with the agencies' systems.

--Assisting Federal agencies in developing a system to insure that qualified safety engineers and industrial hygienists inspect Federal workplaces and in making comprehensive surveys of their workplaces to determine the specific actions and estimated costs needed to bring the agencies in compliance with the act. (See p. 60.)

AGENCY ACTIONS AND UNRESOLVED ISSUES

The Department of Labor advised GAO that it concurred generally with all the recommendations and that OSHA had taken or planned to take various actions along the lines suggested by GAO. (See p. 60.)

MATTERS FOR CONSIDERATION
BY THE COMMITTEE

In view of the number and severity of the violations of safety and health standards noted during our limited inspections and the need to strengthen safety and health programs in many agencies, we recommend that the Committee consider having the Occupational Safety and Health Act of 1970 amended to bring Federal workplaces under the inspection responsibility of OSHA. The inspections should supplement, and not replace, inspections by the agencies' own personnel.

Questions and Responses
regarding
Proposed Executive Order
on
Federal Agency Safety and Health Programs

QUESTION #1:

To what agencies and sub-elements of the agencies does this E.O. extend?

(a) To all legislative and judicial agencies including the Supreme Court and Congressional Committees? Can this be accomplished by Executive Order?

(b) To all installations? Such as embassies and military bases overseas including Antarctica, ships at sea, aircraft?

(c) To all employees, including local nationals overseas?

ANSWER #1:

(a) Section 19 of the Act applies to all of the agencies you have mentioned. Since the traditional scope of an Executive Order issued by the President in his capacity as Chief Executive would not encompass the agencies located within the judicial and legislative branches of the Federal government, however, the Order will provide (Section 5) that the Secretary of Labor may extend its terms to such non-Executive agencies by agreement with such agencies.

Section 19 of the Act is also limited in geographic scope to the continental United States and to assorted outlying areas by section 4(a) of the Act. By contrast,

section 7902 of Title 5 of the United States Code, which established agency safety and health programs before the enactment of the OSHA legislation, provides worldwide coverage for those agencies to which it applies. However, since the agencies subject to 5 U.S.C. 7902 form only a subset of those to which section 19 applies, a subset from which some major Federal agencies are excluded, it was thought best to rely only upon section 19 as the authority for the key provisions of the proposed Order and thus avoid any confusion about agency inclusion in this program. In turn, to provide coverage for as many as possible of those Federal employees who are outside the geographic scope of section 19 but who have traditionally been covered by an agency program under 5 U.S.C. 7902, section 5 of the Order provides that the Secretary of Labor may extend the terms of the Order to them by agreement with the appropriate agencies.

(b) The program would apply to all of the "installations" ~~you~~ you have mentioned, subject of course to the important limitations already explained. It is contemplated that some such "installations" will be indirectly exempted from the program, because the Secretary of Labor may well exempt some categories of employees from the program, such as combat soldiers or fighter pilots, by application of a

rule of reason. The regulatory guidelines, copy attached, describe the inter-related roles of the agency and its subunits in an agency safety and health program, roles worked out after extensive consultation with the Federal Safety Advisory Council.

(c) To the extent the Executive Order will apply outside the continental United States, either directly or by agreement, it will apply to local nationals as well as to American citizens employed by Federal agencies, unless they are excluded from coverage by action of the Secretary of Labor. The Department of Labor will of course consult with the Departments of State and Defense as to the appropriateness of such a step, since it fully recognizes the sensitive nature of such coverage questions in an area like the Canal Zone.

QUESTION #2:

Should the GAO Cost Accounting Standards Board with 41 employees, the Administrative Conference (14), the Advisory Committee on Federal Pay (1), and other minor agencies both (a) designate or appoint an Assistant Secretary (or equivalent) and (b) hire a professional safety and health staff?

ANSWER #2:

These matters shall have to be considered on a case by case basis in accordance with our response to question 1.

Rather than outright exemption in most of these cases, however, we would seek to arrange for these tiny "agencies" to organize a program in conjunction with each other, or with a larger "agency."

QUESTION #3:

What is an "effective" program, "sufficient" funds, or "necessary" staff, equipment, or material in Section 1, paragraph (2)? How can these be measured? What is meant by a "specific budgetary item?" To whom is this "request" transmitted?

ANSWER #3:

As revised, the language of section 1(b) is intended to leave the definitions of "sufficient," "necessary," and "effective" to each agency, working in conjunction with OMB. We hope that the annual evaluations made by the Department of Labor, pursuant to section 2 of the order, will be taken into consideration in these determinations.

QUESTION #4:

(a) In Section 1, paragraph (3), what "rights" accrue to each of the following: (1) each official in charge of an establishment; (2) supervisor - also how is this defined; (3) employee?

(b) What "responsibilities?"

(c) Which rights and responsibilities accrue from OS&H program?

ANSWER #4:

Section 1(c) includes reference to section 1(d), 1(e)(4), 1(e)(5), and 1(f) among others, and the guidelines spell out additional program requirements to which the provisions of this section would also be applicable.

QUESTION #5:

(a) In paragraph (4), what are the standards of "excellent performance?"

(b) What is "culpable failure?"

ANSWER #5:

Any standards for section 1(d) would be established by each agency under Civil Service rules where applicable, and collective bargaining arrangements.

QUESTION #6:

What about those agencies (legislative, judicial and some executive branch) which do not come within the purview of the "rules of the Civil Service Commission" - particularly military personnel?

ANSWER #6:

This language has been deleted.

QUESTION # 7:

In connection with paragraph (5), do we have model agency occupational safety and health policies - e.g. Department of Labor?

ANSWER #7:

The guidelines will provide the model program, based upon the OSHA program in the private sector. We sincerely hope that the Department of Labor agency safety and health program itself could serve as a model for other agencies.

QUESTION #8:

Is an "organization" a necessary prerequisite for OSH - in small agencies, in military departments, in the judiciary? What sort of "procedures" are envisaged? How will effectiveness be measured?

ANSWER #8:

We believe an "organization" and "procedures" are necessary to the success of the program. Those suggested in the guidelines provide the model from which each agency, in consultation with employees, is expected to develop an appropriate program to implement the law and the Executive Order.

QUESTION #9:

Must all agencies have inspectors? What is "professionally competent?"

ANSWER #9:

All agencies must make some arrangements for adequate inspections, as this is considered an integral part of an effective program. The term "professionally competent" has been changed to "technically competent" upon the advice

of the Civil Service Commission in order to ensure that the definition and functions of an "inspector" as conceptualized in the guidelines is embodied in the Executive Order.

QUESTION #10:

How does the establishment of "a procedure for the submission and resolution of employee complaints" relate to E.O. 11491 procedures? Does this draft E.O. override prior labor/management agreements? Should it?

ANSWER #10:

The language of section 1(e)(4) has been revised upon the recommendation of the Civil Service Commission. As revised, this procedure will not disturb the scope of E.O. No. 11491 grievance procedures, but the procedures can proceed simultaneously. It will, however, provide a mechanism to bring alleged unsafe or unhealthful working conditions to the quick attention of those best able to deal with them. Pursuant to section 2(b) of this proposed order, as revised, the Department of Labor stands ready to assist each agency in ensuring the most effective use of this vital "early warning" mechanism, without in any way interfering with the free operation of procedures instituted pursuant to E.O. No. 11491.

QUESTION #11:

What are "appropriate means to ensure employee participation?" Does DOL have internal agency examples?

ANSWER #11:

One means of "employee participation" is a safety and health committee, described in proposed 29 CFR 1960.15, which might also be utilized in standards setting. Other means include adoption of collective bargaining agreements to cover appropriate aspects of this program.

QUESTION #12:

In paragraphs 5 and 10, why is property damage added to the order? What is the basis for the addition? What sort of "occupational accidents" that do not result in injuries or illnesses are being added to the order? How will these be recorded and reported?

ANSWER #12:

In our review of the Order, we noted it contained no specific reference to recordkeeping and reporting as provided in the law. This has been corrected by additions to §§ 1(e)(6) and 2(c) of the Order. Subpart B of the regulatory guidelines describes the recordkeeping and reporting requirements agreed to after extensive discussion by the Federal Agency Safety Council, and reflects a compromise between procedures now in use in the private sector and those now used by Federal agencies.

The language in 1(e)(9) on extensive property damage accidents was eliminated as superfluous. The regulatory guidelines provide, however, that accidents of this type

will be among the types of accidents to be reported.

(§1960.11) This provision is designed to ensure that all serious accidents are reported, whether employees were injured or not, because such accidents might well have caused death or injury had employees been present at the accident site. Reporting will ensure that such accidents are investigated so that preventative measures can be implemented. The Federal Safety Advisory Council has considered the matter of such property damage accident reporting over a long period of time, and approved its inclusion in the Federal program.

QUESTION #13:

How do you "Establish ...(i) priorities with respect to the factors which cause occupational accidents, injuries, ...? Does DOL do this?

ANSWER # 13:

Each agency must evaluate its resources and its known hazards to arrive at a determination of priorities. DOL will be happy to assist in this determination, based upon our experience in selecting "target industries" in the private sector to receive priority attention by OSHA.

QUESTION #14:

In paragraph (6):

(a) Does the participation of employees delimit E.O. 11491?

(b) What are the "other related needs of the agency?"

ANSWER #14:

(a) Upon the advice of the Civil Service Commission, the word "participation" was changed to "comment by and/or consultation with" in order to make it clear that procedures appropriate under E.O. No. 11491 are not to be utilized in standards setting. Also, the language now provides for this procedure to be extended to "all interested persons" so that such "interested persons" as outside experts and manufacturers may also have their views considered. The regulatory guidelines will provide, when revised, that the initial adoption of OSHA standards shall be on a subpart or part basis - e.g., adopt or reject 29 CFR Part 1915, Safety and Health Regulations for Ship Repairing - a procedure approved by the Federal Agency Safety Council. We are confident that with such a procedure, the agencies will be able to move forward swiftly in implementing this basic program requirement.

(b) "Other related needs of the agency" is not intended to provide a general escape clause for agencies ~~which~~ which do not wish to adopt standards "consistent with" OSHA standards. The phrase was inserted to cover certain situations where it has been asserted that enforcement of OSHA standards would interfere directly with agency mission; e.g., a missile that will not fire because of the application of OSHA standards.

QUESTION #15:

In paragraph (8), how can the head of each Federal agency "ensure that all facilities and equipment conform to standards" if he does not have sufficient funds, is in leased quarters, is in a combat or quasi war zone, would possibly violate laws of other jurisdictions, etc.?

ANSWER #15:

The agency head must do the best he can under these conditions. If agency standards and local requirements conflict, the Federal policy will govern. Where new facilities are to be constructed or leased, it should be the agency policy to eliminate as many potential hazards as possible before requiring employees to enter the premises. As Civil Service, GSA, and collective bargaining agreements begin to operate under this program, with appropriate leadership and guidance by DOL, these problems will be resolved on the basis of their experience, just as they are now being resolved in the private sector.

QUESTION #16:

In paragraph (10), why should agency heads submit budget proposals to DOL - will these be funded within the DOL allowance?

ANSWER #16:

The purpose of including identification of funds expended and planned for future expenditure is to enable DOL to accurately evaluate each agency's program in order to make appropriate recommendations to the President as provided by law, and to better guide each agency in the development of its program. See also our response number 3.

QUESTION #17:

Isn't the USC 7902(e) report already sent to DOL? What does "any" report mean? Does this embrace a Presidential inquiry to SECDEF on combat casualties?

ANSWER #17:

Section 19 of the Act provides that any report sent to DOL pursuant to 5 U.S.C. 7902(e) also be included in the annual agency report. These are usually statistical studies, and would not embrace an inquiry by the President on any matter. (See also #12.)

QUESTION #18:

In paragraph (11), do all field units have to participate in Field Federal Safety Councils? Why? Does every USDA Agriculture Extension agent, lighthouse keepers, DEW line maintenance crews, one-man mediation offices, field GAO staff, remote Postal Service personnel, Panama Canal Company, AID field staff, etc. have to comply? What is the relation of this paragraph to Section 4?

ANSWER #18:

This language has been revised to substitute "as many as practicable" for "all." The function and structure of these field councils is set forth in section 4.

QUESTION #19:

In connection with paragraph (12):

(a) Is the agency head's authority under OSHA sec. 19 really subject to an inspection if the Secretary deems necessary? Can the agency head's authority be so circumscribed?

(b) What inspection criteria should the Secretary be subject to? Why?

ANSWER #19:

This language has been revised. A review of the attached digest of the GAO report will reveal that the expanded DOL duties set forth by this proposed Executive Order are intended to satisfy expressed needs of the agencies for DOL leadership and guidance - needs which the GAO strongly implied DOL must meet if the separate status of Federal employees under the Act is to remain unaltered. In this capacity, DOL's limited inspection role has been clarified, and is fully in accord with section 19 of the Act, which places the primary responsibility for agency safety and health programs upon the respective agencies. The original draft of sections (1)m and 2 of the proposed order apparently failed to adequately

convey this intent, and the provisions have therefore been revised. The language of section 2(d), the provision on annual agency evaluation, was taken from the current Executive Order (E.O. 11612, Sec. 2(b)), with additional emphasis on the limited role inspections play in the annual evaluation program.

QUESTION #20:

In view of the many probable national security or foreign policy exceptions required, what is the current status of Executive Orders specifically forbidding investigation by the Secretary of Labor. In view of the absolute nature of this paragraph, should not such exceptions be prepared in advance?

ANSWER #20:

This language in section 1(m) is not in the Act, but was adopted from the language of section 19 relating to access of the Secretary of Labor to certain agency records to deal with situations we expect to be few in number. This expectation is based upon our experience under Executive Order No. 11612, which required unqualified cooperation without any exceptions expressly stated. Therefore we do not believe such Executive Orders can or need be prepared in advance. See also response number 1.

QUESTION #21:

In paragraph (3), what complaint appeals procedure will be set up. How will it fit in with CSC and E.O. 11491 procedures?

ANSWER #21:

See response number 10.

Addition: Section 3 of the Order has been revised to bring it into accord with the Federal Advisory Committee Act.

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placed therein will not become adulterated. Any cleaning compound, lye, soda solution, or other chemical used in cleaning the means of conveyance must be thoroughly removed. Such means of conveyance at official establishments shall be subject to inspection by an inspector prior to or during loading. The type and extent of such inspection shall be at the Program's discretion and shall be adequate to determine that product moved in such conveyance will not become adulterated. Any means of conveyance found upon such inspection to be in such condition that product placed therein would become adulterated shall not be used. Product placed in any means of conveyance that is found by the inspector to be in such condition that the product may have become adulterated shall be removed from the means of conveyance and handled in accordance with § 318.2 (d) of this subchapter.

§ 308.12 [Amended]

2. The Table of Contents would be amended to reflect the new section heading for § 308.12 to read as follows: § 308.12 *Second-hand tubs, barrels, and other containers.*

3. Paragraph (b) of § 308.12 would be revoked, and the "(a)" designation would be deleted from the present paragraph (a).

4. The Table of Contents of Part 381, Subpart S, would be amended to reflect a new heading for § 381.190, and § 381.190 would be amended by adding a new paragraph (c) as follows:

§ 381.190 Transactions in slaughtered poultry and other poultry products restricted; vehicle sanitation requirements.

(c) No person, engaged in the business of buying, selling, freezing, storing, or transporting, in or for commerce, poultry products capable of use as human food, or importing such articles, shall transport, offer for transportation, or receive for transportation in commerce or in any State designated under § 381.221 of this Part, any poultry product which is capable of use as human food unless the railroad car, truck, or other means of conveyance in which the product is contained or transported is adequately closed, so constructed and in such condition as to prevent entry of outside air or dust while in transit, reasonably free of foreign matter such as dust, dirt, rust, or other articles or residue, and free of chemical residues, so that poultry product placed therein will not become adulterated. Any cleaning compound, lye, soda solution, or other chemical used in cleaning the means of conveyance must be thoroughly removed. Such means of conveyance at official establishments shall be subject to inspection by an inspector prior to or during loading. The type and extent of such inspection shall be at the Inspection Service's discretion and shall be adequate to determine that poultry product moved in such conveyance will not become adulterated. Any means of conveyance found upon such inspection to be in such condition that

poultry product placed therein would become adulterated shall not be used. Poultry product placed in any means of conveyance that is found by the inspector to be in such condition that the poultry product may have become adulterated shall be removed from the means of conveyance and handled in accordance with § 381.145(b) of this Part.

Any person wishing to submit written data, views, or arguments concerning the proposed amendments may do so by filing them in duplicate with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, by December 7, 1973.

Any person desiring opportunity for oral presentation of views should address such requests to the Inspection Standards and Regulations Staff, Scientific and Technical Services, Meat and Poultry Inspection Program, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, so that arrangements may be made for such views to be presented prior to the date specified in the preceding paragraph. A record will be made of all views orally presented.

All written submissions and records of oral views made pursuant to this notice will be made available for public inspection in the Office of the Hearing Clerk during regular hours of business, unless the person makes the submission to the Staff identified in the preceding paragraph and requests that it be held confidential. A determination will be made whether a proper showing in support of the request has been made on grounds that its disclosure could adversely affect such person by disclosing information in the nature of trade secrets or commercial or financial information obtained from any person and privileged or confidential. If it is determined that a proper showing has been made in support of the request, the material will be held confidential; otherwise, notice will be given of denial of such request and an opportunity afforded for withdrawal of the submission. Requests for confidential treatment will be held confidential (7 CFR 1.27(c)).

Comments on the proposal should bear a reference to the date and page number of this issue of the FEDERAL REGISTER.

Done at Washington, D.C., on September 21, 1973.

F. J. McILHEEN,
Administrator, Animal and
Plant Health Inspection Service.
[FR Doc. 73-26734 Filed 9-27-73; 8:45 am]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[29 CFR Part 1560]

SAFETY AND HEALTH PROVISIONS FOR FEDERAL EMPLOYEES

Proposed Rules for Safety and Health Programs for Federal Agencies

Pursuant to section 23 of the Federal Employees' Compensation Act, as

amended (39 Stat. 749; 5 U.S.C. 7902(b)-(e)); sections 8(g)(2) and 19 of the Occupational Safety and Health Act of 1970 (84 Stat. 1600, 1609; 29 U.S.C. 657(g)(2), 668); section 2(a) of Executive Order No. 11612 (36 FR 13891); and Secretary of Labor's Order No. 12-71 (36 FR 8754), it is proposed to promulgate (1) record-keeping and reporting regulations for all Federal agencies similar to the record-keeping and reporting procedures required of other employers under 29 CFR Part 1904; and (2) regulatory guidelines for Federal agency internal evaluation, inspection, and processing of complaints by Federal employees. The following proposed rules are intended to implement sections 19(a) and 24(a) of the Occupational Safety and Health Act of 1970, section 7902(b), (d), and (e) of the Federal Employees' Compensation Act, and section 2(a) (1) and (3) of Executive Order No. 11612.

Interested persons are invited to submit in writing comments, suggestions or objections on the proposed rules no later than October 18, 1973. Comments should be directed to the Office of Federal Agency Safety Programs, Occupational Safety and Health Administration, Room 409, 400 First Street N.W., Washington, D.C. 20210. Copies of the comments which are received will be available for public inspection at this address. Changes may be made in the proposed rules in light of any comments received.

It is proposed that the new part 1960 shall read as follows:

PART 1960—FEDERAL EMPLOYEES

Subpart A—General

Sec.	Purpose and scope of this part.
1960.1	
1960.2	Definitions.

Subpart B—Recording and Reporting Federal Occupational Injuries, Illnesses and Accidents

1960.3	Purpose and scope.
1960.4	Record or log of Federal occupational injuries and illnesses.
1960.5	Supplementary record.
1960.6	Quarterly and annual summaries.
1960.7	Quarterly and annual summaries of Federal occupational accidents.
1960.8	Period covered.
1960.9	Retention of records.
1960.10	Access to records.
1960.11	Reporting of serious accidents.
1960.12	Plan of action.

Subpart C—Agency Organization and Standard Setting

1960.13	Purpose and scope.
1960.14	Designation of safety and health officials.
1960.15	Safety and health committees.
1960.16	Posting of notice; availability of Act, regulations and health program and applicable standards.
1960.17	Duties of heads of agencies and employees.
1960.18	OSHA standards and special standards.

Subpart D—Procedures for Inspections and Employee Complaints

1960.19	Safety and health inspectors; frequency of inspection.
1960.20	Conduct of inspections.
1960.21	Advance notice of inspections.
1960.22	Representatives of officials in charge and representatives of employees.
1960.23	Consultation with employees.

PROPOSED RULES

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Sec.
1960.24 Complaints by employees.
1960.25 Imminent danger.
1960.26 Notices of hazards.
1960.27 Correction of hazards.

Subpart E—Federal Agency Internal Evaluation

1960.28 Duties of Federal agencies.

AUTHORITY: Sec. 33(c), 39 Stat. 749, as amended; (5 U.S.C. 7902(b)-(e)) and secs. 8(g)(2), 19, 84 Stat. 1600, 1609; (29 U.S.C. 657(g)(2), 668).

Subpart A—General

§ 1960.1 Purpose and scope of this part.

(a) The purpose of this part is to implement the provisions of section 33 of the Federal Employees Compensation Act, 5 U.S.C. 7902, section 19 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 668, and Executive Order No. 11612 (36 FR 13391).

(b) The purpose of subpart B of this part is to implement the recordkeeping and reporting requirements of the applicable statutory provisions and the Executive Order.

(1) The Compensation Act requires that each agency keep a record of occupational injuries, illnesses and accidents to its employees, and also requires that each agency "shall . . . make such statistical or other reports on such forms as the Secretary of Labor may prescribe by regulations." See 5 U.S.C. 7902(e).

(2) Section 19 of the Occupational Safety and Health Act of 1970 requires the head of each agency to keep adequate records of all occupational accidents and illnesses, to consult with the Secretary of Labor on the form and content of such records, and to provide the Secretary of Labor access to such records. It also provides that the head of each agency shall make an annual report to the Secretary of Labor with respect to occupational accidents and injuries.

(3) Executive Order No. 11612 requires the head of each agency to cooperate with and assist the Secretary of Labor in the performance of his duties, and to submit to him an annual report containing any report required under the Compensation Act and such other

(1) The Compensation Act requires that: "The head of each agency shall develop and support organized safety promotional programs to reduce accidents and injuries among employees of his agency, encourage safe practices and eliminate work hazards and health risks" (5 U.S.C. 7902(d)).

(2) Section 19 of the Occupational Safety and Health Act of 1970 states: "It shall be the responsibility of the head of each Federal agency to establish and maintain an effective and comprehensive occupational safety and health program which is consistent with the standards promulgated under section 6 (of this Act)" (29 U.S.C. 668). Section 19 also requires that the head of each agency shall consult with the representatives of the employees thereof in the establishment and operation of such program, and that he shall make an annual report to the Secretary of Labor with respect to the agency's occupational safety and health program.

(3) Executive Order No. 11612 provides that the head of each agency shall establish an occupational safety and health program in compliance with the requirements of these statutes; that he shall designate a qualified official to be responsible for the management of the program within his agency; that he shall provide an organization and a set of procedures to implement the program; that he shall provide for periodic inspections of workplaces to ensure compliance with standards, and that he shall correct conditions that do not meet safety and health standards. It also provides that the head of each agency shall establish plans and procedures for evaluating the effectiveness of the occupational safety and health program within his agency.

(4) Executive Order No. 11612 requires the Secretary of Labor to issue regulations to provide guidance to the heads of agencies in fulfilling their safety and health responsibilities. The purposes of subparts C, D and E of this Part are to provide guidelines both to enable each agency head to carry out his safety and health responsibilities and to provide

the agency or his designee determines that an alternative means would be at least as effective as that provided by the provisions of this Part, provided that the requirements of the applicable statutory provisions and the Executive Order are observed, and provided that the Secretary of Labor is informed of the procedures adopted. Furthermore, these regulatory guidelines do not affect in any way any collective bargaining agreement in effect prior to the promulgation of this part, nor do they affect in any way the authority of the agency and its employees to engage in collective bargaining as to safety and health matters, provided that the requirements set forth in the applicable statutory provisions and the Executive Order are observed.

(d) The Secretary of Labor may at any time waive any of the provisions of this part if he determines that such waiver will promote the purposes of this part. Prior to issuing such a waiver, the Secretary will publish notification of his intent in the Federal Register, and will request comments in writing to be submitted within 20 days.

(e) The Secretary of Labor shall to the extent feasible provide consultation services to the agencies to assist them in implementing safety and health programs.

(f) Any agency which is reorganized may consult with the Secretary of Labor in making the necessary adjustments to its safety and health program.

(g) As stated more fully in § 1975.3 of this Chapter, the purpose of the Occupational Safety and Health Act of 1970 is to require every employer to provide safe and healthful working conditions for his employees. Federal contractors are directly subject to the provisions of the Act, since they do not fall within the coverage of section 19. Therefore, this part applies only to employees employed by the Federal agencies and does not apply to employees of Federal contractors, except as provided in § 1960.11 for reporting of serious accidents.

§ 1960.2 Definitions.

(a) "Act" means the Williams-Steiger Occupational Safety and Health Act of 1970.

(e) The term "reporting unit" means an establishment, except as otherwise agreed between the agency and the Office of Federal Agency Safety Programs. Any such agreement in effect prior to the promulgation of this part shall remain in effect unless either party desires modification.

(f) The term "designated safety and health official" means the individual who is responsible for the management of the safety and health program within his agency and is designated or appointed by the head of the agency under § 1960.14 of subpart C.

(g) The term "safety and health professional" means a person or persons who meet the Civil Service standards for Safety Manager/Specialist GS-018, Safety Engineer GS-803, Fire Protection Engineer GS-804, Industrial Hygienist GS-690, Fire Protection Specialist/Marshall GS-081, Health Hygienist GS-1306, or the military equivalent.

(h) The term "safety and health inspector" means a safety and health professional or other person authorized pursuant to § 1960.19 of this part to carry out inspections for the purposes of subpart D of this part.

(i) The term "working days" means Mondays through Fridays (excluding Federal holidays) or other appropriate authorized shift.

(j) "Recordable occupational injuries or illnesses" are any occupational injuries or illnesses which result in:

(1) Fatalities, regardless of the time between the injury and death, or the length of the illness; or

(2) Lost workday cases, other than fatalities, that result in lost workdays; or

(3) Nonfatal cases without lost workdays which result in transfer to another job or termination of employment, or require medical treatment (other than first aid), or involve loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.

(k) "Medical treatment" includes treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first-aid treatment even though provided by a physician or registered professional personnel.

(l) "First Aid" is any one-time treatment, and any followup visit for the purpose of observation, of minor scratches, cuts, burns, splinters, and so forth, which do not ordinarily require medical care. Such one-time treatment, and followup visit for the purpose of observation, is considered first aid even though provided by a physician or registered professional personnel.

(m) "Lost workdays:" The number of days the employee would have worked but could not because of occupational injury or illness. The number of lost workdays should not include the day of injury. The number of days includes all

days (consecutive or not) on which, because of the injury or illness:

(1) The employee would have worked but could not, or

(2) The employee was assigned to a temporary job, or

(3) The employee worked at a permanent job less than full time, or

(4) The employee worked at a permanently assigned job but could not perform all duties normally assigned to it.

For employees not having a regularly scheduled shift, i.e., certain truck drivers, construction workers, part-time employees, etc., it may be necessary to estimate the number of lost workdays. Estimates of lost workdays shall be based on prior work history of the employee and days worked by employees, not ill or injured, working in the agency and/or occupation of the ill or injured employee.

Subpart B—Recording and Reporting Federal Occupational Injuries, Illnesses and Accidents

§ 1960.3 Purpose and scope.

(a) The purposes of this subpart B are set forth in § 1960.1(b) of this part.

(b) Section 24(a) of the Occupational Safety and Health Act of 1970 requires that: "In order to further the purposes of this Act, the Secretary . . . shall develop and maintain an effective program of collection, compilation, and analysis of occupational safety and health statistics." This program encompasses federal employment; and, as in the private sector, the statistical program is based upon the records kept of occupational accidents, illnesses and injuries. The recordkeeping provisions of this subpart must therefore be comprehensive so that the Secretary of Labor can effectively carry out his duties pursuant to section 24 of the Act.

(c) The records and reports required by this subpart may be used by the Secretary of Labor in the preparation of reports which he is required to submit to the President and to the Congress. The reports will also be used in the development of information regarding the prevention of occupational injuries, illnesses and accidents.

(d) (1) For agencies engaged in activities such as agriculture, construction, transportation, communications, and electric, gas and sanitary services, which may be physically dispersed, records required to be maintained by this subpart at each establishment may be maintained at a place to which employees report each day.

(2) Records for personnel who do not primarily report or work at a single establishment, and who are generally not supervised in their daily work, such as traveling employees, technicians, engineers, etc., shall be maintained at the location from which they are paid or the base from which personnel operate to carry out their activities.

(e) Information required to be submitted to the Occupational Safety and Health Administration (OSHA) by this subpart may be submitted on media

processable by electronic data processing equipment provided that such media comply with the requirements of the Bureau of Labor Statistics, Office of Data Collection and Survey Operations, U.S. Department of Labor.

§ 1960.4 Record or log of Federal occupational injuries and illnesses.

(a) Each Federal agency shall maintain a record or log of all recordable occupational injuries and illnesses at each establishment. For reasons of efficient administration or practicality, the records or log may be maintained at a location other than the establishment. Where both civilian and military employees are employed at a single establishment, separate records or logs shall be maintained for each category.

(b) Within 6 working days after receiving information of a recordable occupational injury or illness, appropriate information concerning such injury or illness shall be entered on the record or log. For this purpose, OSHA Form No. 100F, or its equivalent, shall be used and shall be completed in the detail required by that form and the instructions contained therein.

§ 1960.5 Supplementary record.

In addition to the record or log of Federal occupational injuries and illnesses provided for under § 1960.3, each Federal agency shall maintain at each establishment a supplementary record of occupational injuries and illnesses. The record shall be completed within 6 working days after the receipt of information that a recordable injury or illness has occurred. For this purpose, OSHA Form No. 101F, Bureau of Employees' Compensation Forms or other equivalent forms may be used. OSHA Form No. 101F, or its equivalent, shall be completed in the detail required by the form and the instructions contained therein.

§ 1960.6 Quarterly and annual summaries.

(a) Each Federal agency shall compile an annual summary of occupational injuries and illnesses for each establishment, and shall compile both a quarterly and annual summary of occupational injuries and illnesses for each reporting unit. The summaries shall be based on the record or log of Federal occupational injuries and illnesses maintained pursuant to § 1960.3. OSHA Form No. 102F shall be used for these purposes and shall be completed in the form and detail required by that form and the instructions contained therein.

(b) Each establishment will post a copy of its annual summary no later than 45 calendar days after the close of the calendar year. Copies of the summary required to be posted under this section will be posted for a minimum of 30 consecutive days in a conspicuous place or places in the establishment where notices to employees are customarily posted. Where establishment activities are physically dispersed, the notice may be posted at the location to which

employees report each day. Where employees do not primarily work at or report to a single location, the notice may be posted at the location from which the employees operate to carry out their activities. Each Federal agency will take any necessary steps to insure that such summary is not altered, defaced, or covered by other material.

(c) Each agency shall furnish OSHA with a copy of its quarterly and annual summaries compiled on the basis of reporting units. Each quarterly summary shall be completed and forwarded to OSHA no later than 45 calendar days after the end of each calendar quarter. The annual summary shall be completed and forwarded to OSHA no later than 45 calendar days after the close of the calendar year.

§ 1960.7 Quarterly and annual summaries of Federal occupational accidents.

(a) Each Federal agency shall compile quarterly summaries of Federal occupational accidents and an annual summary of Federal occupational accidents. OSHA Form No. 1021F shall be used for this purpose and shall be completed in the form and in the detail required by that form and the instructions contained therein.

(b) Each quarterly summary and the annual summary of Federal occupational accidents should be completed and forwarded to OSHA no later than 45 calendar days after the close of the applicable reporting period.

§ 1960.8 Period covered.

All records, reports and summaries required by §§ 1960.3 through 1960.7 shall be established on a calendar year basis.

§ 1960.9 Retention of records.

Records required to be maintained under the provisions of this subpart shall be retained by each Federal agency for 5 years following the end of the calendar year to which they relate.

§ 1960.10 Access to records.

(a) The records required to be maintained under the provisions of this subpart shall be available and made accessible to the Secretary of Labor or his authorized representative unless such records are specifically required by Executive Order to be kept secret in the interest of national defense or foreign policy, in which case the Secretary shall have access to such information as will not jeopardize national defense or foreign policy. The Secretary of Labor or his authorized representative will request access to such records from the head of the agency prior to examination.

(b) Information concerning injuries, illnesses or accidents which in the interest of national defense or foreign policy must be kept secret, shall be recorded on separate forms pursuant to the requirements of this subpart. Such records shall not be submitted to the U.S. Department of Labor, but shall be used by the appropriate Federal agency in eval-

uating the agency's program to reduce occupational injuries, illnesses and accidents.

(c) Each employee shall have access to his injury, illness or accident records in accordance with Civil Service rules, and representatives of employees shall have access to such records with the permission of affected employees.

§ 1960.11 Reporting of serious accidents.

Within two working days after the occurrence of an employment accident which is fatal to one or more employees, which results in the hospitalization of five or more employees, or which involves property damage of \$100,000 or more, or within two working days after the occurrence of a death which is the result of an employment accident, the head of the Federal agency shall report the accident either by telephone or by telegraph to the Office of Federal Agency Safety Programs, OSHA, U.S. Department of Labor. The report shall relate the circumstances of the accident, any actions taken by the agency regarding the accident, the number of fatalities, and the extent of any injuries. The agency head shall also report any employment accident involving both Federal and non-Federal employees which results in a fatality or the hospitalization of five or more such employees, notwithstanding the provision in § 1960.1 making this part applicable only to Federal employees and inapplicable to employees of Federal contractors. The Director of the Office of Federal Agency Safety Programs may require such additional reports, in writing or otherwise, as he deems necessary.

§ 1960.12 Plan of action.

If it has not already done so by the effective date of this part, each Federal agency now in existence shall submit the following information to OSHA no later than November 30, 1973, and at such other times as changes occur:

(a) A list of the names and addresses of each Federal reporting unit which will be covered in the records and reports required by this subpart.

(b) The average number of full-time and part-time personnel employed in each reporting unit for which separate records and reports will be maintained.

(c) A brief description of any differences between an agency's internal recording and reporting system and the recording and reporting system provided by this subpart.

Any Federal agency created or reorganized after the effective date of this part shall submit an appropriate plan within three months of commencement of operations as a new entity.

Subpart C—Agency Organization and Standards Setting

§ 1960.13 Purpose and scope.

The purpose of subpart C, generally set forth in § 1960.1(c), is to provide guidelines for the establishment of an organizational structure within each

Federal agency for the conduct of its safety and health program to set forth the respective duties of agency and employee in the successful implementation of such a program and to provide for the promulgation of specific safety and health standards appropriate to the working conditions of each agency. As stated in § 1960.1(c) in more detail, the provisions of this subpart do not affect collective bargaining practices and arrangements.

§ 1960.14 Designation of safety and health officials.

The head of each Federal agency shall designate an official who shall be responsible for the management of the safety and health program within the agency and to whom safety and health professionals will report directly. The official shall be of the rank of Assistant Secretary, or of equivalent rank or equivalent degree of responsibility. Such official will have sufficient professional staff to carry out his functions under this part.

§ 1960.15 Safety and health committees.

The head of each agency will provide for the establishment of agency safety and health committees, composed of representatives of management and representatives of the employees, at the headquarters level, at the regional or comparable level, and at the establishment level, for the purpose of advising the agency with respect to its responsibilities under this part. For the purposes of this section, the term "establishment level" means an establishment, as defined in § 1960.2(d), and, except as otherwise agreed between an agency and the Office of Federal Agency Safety Programs, where 10 or more employees report to work. This limitation is not intended in any way to preclude the employees of any size establishment from advising the agency as to safety and health hazards present in such establishments, or from utilizing other procedures provided by this part.

§ 1960.16 Posting of notice; availability of Act, regulations, description of the agency safety and health program and applicable standards.

(a) Each Federal agency will post and keep posted a notice or notices informing employees of the protections and obligations provided for in the Act. The Office of Federal Agency Safety Programs will furnish a uniform poster to those agencies who wish to use it. Each agency will add to this uniform poster, or include in its notice or notices, the details of the agency's complaint procedures and the location where employees will be able to obtain information about the agency's safety program, including specific safety and health standards. Such notice or notices will be posted by the agency in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each agency will take steps to insure that such notices are not altered, defaced, or covered by other material.

PROPOSED RULES

(b) Copies of the Act, Executive Order, regulations published in the part, details of the agency-safety program and applicable safety and health standards, or summaries of any of the foregoing items, will be made available upon request to employees or their authorized representative for review in the establishment where the employees are employed as soon as practicable and at a time mutually convenient to the employees or their authorized representative and the agency.

§ 1960.17 Duties of heads of agencies and employees.

(a) The head of each Federal agency shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees and shall comply with occupational safety and health standards and supplementary standards adopted pursuant to § 1960.18 of this part.

(b) Each Federal employee who exercises any supervisory functions will comply with occupational safety and health standards and special standards and all rules, regulations, and orders issued pursuant to this part.

(c) Each Federal employee will comply with occupational safety and health standards and special standards and all rules, regulations, and orders issued pursuant to this part which are applicable to his own actions and conduct.

(d) The head of each agency will ensure that each official in charge of the establishment, supervisor, or employee is recognized for excellent performance in carrying out his or her safety and health program responsibilities and conversely is disciplined in accordance with agency rules which are consistent with Civil Service rules where there is a culpable failure to carry out his or her safety and health program responsibilities.

§ 1960.18 OSHA standards and special standards.

(a) The head of each Federal agency shall adopt occupational safety and health standards promulgated by the Secretary of Labor pursuant to section 6 of the Occupational Safety and Health Act to the extent that such standards are in the judgment of the agency head, and after consultation with the Secretary of Labor, applicable to the working conditions of the particular agency. The head of each agency may, after consultation with the Secretary of Labor, adopt any different or supplementary occupational safety and health standards consistent with section 6 standards as special standards for specialized application to particular working conditions and other related needs of the agency. For the purposes of adopting any standards, the head of each agency shall establish procedures under which all interested and affected employees or their representatives shall be afforded the opportunity to submit written data, views and comments prior to the adoption of the stand-

ards. In such procedures the head of each agency may provide for a hearing if requested by any representative of employees. To the extent deemed appropriate by the head of the agency, the labor-management safety and health committees established under § 1960.15 of this part will be utilized as the forum for procedures relating to the adoption of any standards or the modification or revocation of any special standards.

(b) The head of each agency may revise, modify, or revoke any special standard, provided that the procedures in paragraph (a) of this section are invoked for such purposes.

(c) Copies of all standards adopted for the agency safety and health program shall be made accessible to the Secretary of Labor. Copies of any revision, modification, or revocation of any adopted special standard shall also be made accessible to the Secretary of Labor. Each agency shall notify the Secretary of Labor of the final adoption, revision, modification, or revocation of any special standard within 30 days following such final action.

(d) Where any incorporation by reference is involved in promulgating, revising or modifying any special standard pursuant to this section, each agency shall follow the rules set forth in 1 CFR 51.6, 51.7 and 51.8, unless the Secretary of Labor waives such rules for a particular agency. In considering a request for a waiver under this subsection, the Secretary of Labor shall consult with the Director of the Federal Register.

Subpart D—Procedures for Inspections and Employee Complaints

§ 1960.19 Safety and health inspectors; frequency of inspection.

(a) Each agency will utilize safety health inspectors to conduct inspections of workplaces. For establishments where particularly hazardous work is performed, such as chemical or machine processes or material-handling or loading operations, inspections will be made by a safety and health professional. For less hazardous establishments the designated safety and health official may utilize as inspectors persons who do not meet the specific qualifications as set forth in § 1960.02 of this part defining the term "safety and health professional."

(b) As authorized by the designated safety and health official, safety and health inspectors may utilize the services of additional technical and professional personnel to aid them to evaluate safety and health hazards while conducting an inspection. Furthermore, all safety and health inspectors will be provided with technical test equipment where appropriate.

(c) Each agency which has areas containing information classified in the interest of national security will provide access to safety and health inspectors who have obtained the appropriate security clearance.

(d) All establishments, including offices, will be inspected at least once an-

nually. For all establishments where particularly hazardous work is performed, inspections will be conducted more frequently, as determined by the designated safety and health official based upon degree of risk and extent of hazard involved.

(e) Pursuant to Executive Order 11612, the Secretary of Labor shall seek the consent of agencies to conduct such investigations as he deems necessary.

§ 1960.20 Conduct of inspection.

(a) For the purpose of assuring safe and healthful working conditions for employees of agencies, safety and health inspectors will be authorized to enter without delay and at reasonable times any building, installation, facility, construction site, or other area, workplace or environment where work is performed by employees of the agency; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; and to question privately any employee or any official in charge of an establishment, or both. Subject to these provisions, and to the provisions of § 1960.19, inspections will take place at such times and in such establishments as the designated safety and health official of the agency directs.

(b) Safety and health inspectors will have authority to take environmental samples, to take or obtain photographs related to the purpose of the inspection, and to employ other reasonable techniques of inspection.

(c) Safety and health inspectors of the agencies will comply with all safety and health rules and practices at the establishment being inspected, and they will wear and use appropriate protective clothing and equipment.

(d) The conduct of inspections will be such as to preclude unreasonable disruption of the operations of the establishment.

(e) At the conclusion of an inspection, the safety and health inspector will confer with the official in charge of the establishment or his representative and informally advise him of any apparent safety or health hazards disclosed by the inspection. During such conference, the official in charge of the establishment will be afforded an opportunity to bring to the attention of the safety and health inspector any pertinent information regarding conditions in the workplace.

§ 1960.21 Advance notice of inspections.

(a) Advance notice of inspections will not be given to the official in charge of an establishment, except in the following situations: (1) In case of apparent imminent danger, to enable the official in charge of an establishment to abate the danger as quickly as possible; (2) in circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;

and (3) where necessary to assure the presence of representatives of the official in charge of the establishment and employees or the appropriate personnel needed to aid in the inspection.

(b) In the situations described in paragraph (a) of this section, advance notice of inspections will be given only if authorized by the designated safety and health official, except that in cases of apparent imminent danger, advance notice may be given by the safety and health inspector without such authorization if the designated safety and health official is not immediately available. When advance notice is given, it will be the responsibility of the official in charge of the establishment to notify promptly the authorized representative of employees of the inspection, if the identity of such representative is known to the official in charge. (See § 1960.22(b) as to the situations where there is no authorized representative of employees of the inspection.) Advance notice in any of the situations described in paragraph (a) of this section should not be given more than 24 hours before the inspection is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.

§ 1960.22 Representatives of officials in charge and representatives of employees.

(a) Safety and health inspectors will be in charge of inspections and questioning of persons. A representative of the official in charge of an establishment and a representative authorized by employees under his supervision will be given an opportunity to accompany the safety and health inspector during the physical inspection of any workplace for the purpose of aiding such inspection. A safety and health inspector will permit additional representatives of the official in charge and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different representative of the official in charge and a different representative authorized by employees may accompany the safety and health inspector during each different phase of an inspection. In establishments where inspections are made on a high frequency basis, such as daily or weekly, the designated safety and health official of the agency may determine that accompanying representatives would unduly restrict the inspections. In such cases the right of accompaniment on physical inspection of the workplace may be withheld.

(b) Safety and health inspectors will be authorized to deny the right of accompaniment under this section to any person whose participation interferes with a fair and orderly inspection. With regard to information classified in the interest of national security, only persons authorized to have access to such information will accompany a safety and health inspector in areas containing such information.

§ 1960.23 Consultation with employees.

Safety and health inspectors will consult with employees concerning matters of occupational safety and health to the extent the inspectors deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee will be afforded an opportunity to bring any hazard which he has reason to believe exists in the workplace to the attention of the safety and health inspector.

§ 1960.21 Complaints by employees.

(a) Any employee or representative of employees who believes that a safety or health hazard exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the hazard to the designated safety and health official within that agency. Any such notice will be reduced to writing; will set forth with reasonable particularity the grounds for the notice; and may be signed by the employee or representative of employees. Upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not be disclosed to anyone other than the designated safety and health official and authorized representatives of the Secretary of Labor, except as provided in paragraph (b) of this section.

(b) The designated safety and health official will consider the complaint and determine within 5 working days whether there are reasonable grounds to believe that the alleged safety or health hazard exists. If he does so determine, he will cause an inspection to be made to determine if such alleged hazard exists. If the inspector is unable to locate the alleged hazard without the assistance of the complainant, the designated safety and health official may give the inspector the name of the employee notwithstanding the provisions of paragraph (a) of this section, provided that the inspector respect the request of the complainant that his name and the name of individual employees referred to in the complaint not be disclosed. In the event the employee complaint describes a hazard presenting imminent danger to the safety or health of employees, the designated safety and health official will make an immediate determination as to whether there are reasonable grounds to believe that the alleged hazard exists. If he does so determine, he will cause an immediate inspection to be made. Employee complaints alleging imminent danger situations will be made first by telephone or telegraph and reduced to writing as soon as practicable thereafter.

(c) Inspections initiated pursuant to this section will not be limited to matters referred to in the complaint. Furthermore, prior to or during any inspection of a workplace initiated pursuant to this section, any employee employed in such workplace or representative of employees, will be permitted to notify the safety and health inspector

of any hazard which he has reason to believe exists in such workplace.

(d) If the designated safety and health official determines that there are no reasonable grounds to believe a hazard exists or if an inspection is made on the basis of a complaint but no hazard is determined to exist, the employee or representative of employees who filed the complaint will be entitled to an informal review of such determination and a written statement by the designated safety and health official of the reasons for the final disposition of the complaint.

(e) The agency may use a board of investigation procedure or investigational hearing in lieu of the procedures described in this section, provided that the substituted procedure will to the extent applicable include the essential elements of employee and employee representative involvement in the complaint procedures set forth in this section.

(f) If the employee or representative of employees who filed the complaint is dissatisfied with the final disposition, such person may contact, in writing, the Office of Federal Agency Safety Programs, describing in detail the entire processing of the complaint. The Office of Federal Agency Safety Programs may request the agency head to submit a report on its investigation, or the Office of Federal Agency Safety Programs may itself investigate the entire proceeding. Pursuant to negotiation between the Secretary and the agency head under § 1960.19(d), such investigation may include inspection of the alleged hazard. Each agency shall maintain its complaint files intact for five years after the closing of an investigation.

(g) Section 11(c)(1) of the Occupational Safety and Health Act provides: "No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act." The head of the agency will include in the agency safety and health program needed safeguards to insure that no employee is discriminated against in violation of the provisions of section 11(c)(1) of the Occupational Safety and Health Act. These safeguards will, to the extent applicable, be consistent with any regulations of the Civil Service Commission and with those of the agency involved, dealing with employee discrimination.

§ 1960.25 Imminent danger.

Whenever and as soon as a designated safety and health official concludes on the basis of an inspection that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through

the enforcement procedures otherwise provided, he shall inform the affected employees and official in charge of the establishment of the danger and require immediate abatement, including withdrawal of employees from the dangerous circumstances.

§ 1960.26 Notices of hazards.

(a) Each agency will establish a procedure for issuing notices of hazards discovered upon inspection. Notices will describe with particularity the nature of the hazard, including a reference to the standard or other requirement involved. The notice will also fix a reasonable time for the abatement of the hazard. A copy of the notice will be sent to the official in charge of the establishment.

(b) If a notice of hazard is issued as a result of a request for inspection under § 1960.24(a) or a notification of hazard under § 1960.24(c), a copy of the notice of hazard will also be sent to the employee or representative of employees who made such request or notification.

(c) Upon receipt of any notice of hazard, the official in charge of an establishment will immediately post such notice, or a copy thereof, unedited, at or near each place a hazard referred to in the notice occurred, except as provided below. Where, because of the nature of the establishment operations, it is not practicable to post the notice at or near each place of hazard, such notice will be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where establishment activities are physically dispersed, the notice may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location, the notice may be posted at the location from which the employees operate to carry out their activities. The official in charge of an establishment will take steps to ensure that the notice is not altered, defaced, or covered by other material.

(d) Each notice of hazard, or a copy thereof, will remain posted until the hazard has been abated, or for 3 working days, whichever is later.

§ 1960.27 Correction of hazards.

(a) The procedures for correcting hazards will include reinspection by the office of the designated safety and health official to determine whether the correction was made. If upon reinspection the correction was not made, the designated safety and health official shall make this fact known to the head of the agency for appropriate action.

(b) If in the judgment of the designated safety and health official abatement of a safety or health hazard will not be possible within 30 working days, the official in charge of the establishment will submit an abatement plan to the designated safety and health official with a copy thereof to the head of the agency and to the Secretary of Labor. Such plan will contain an explanation of the circumstances of the delay in abatement, a proposed timetable for the abate-

ment, and a summary of steps being taken in the interim to protect employees from being injured by the hazard. A copy of the plan will be sent to the safety and health committee of the agency for appropriate comment. The head of each agency will inform the Secretary of Labor at regular intervals to be determined by the Secretary as to the progress made in carrying out the abatement plan. Any changes in the abatement plan will require the submission of a new plan in accordance with the provisions of this section.

Subpart E—Federal Agency Internal Evaluation

§ 1960.28 Duties of Federal agencies.

Each agency shall conduct an annual detailed internal evaluation of its occupational safety and health program. Basic guidelines for this evaluation will be issued periodically by the Office of Federal Agency Safety Programs. These internal evaluations shall be utilized by each agency for the purposes set forth in the applicable statutes and Executive Order No. 11612, as described in § 1960.1, and shall be maintained and made available by each agency for review by the Office of Federal Agency Safety Programs.

Signed at Washington, D.C., this 24th day of September 1973.

JOHN H. STENDER,
Assistant Secretary of Labor.

[FR Doc. 73-20707 Filed 9-27-73; 8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 121, 123, 133]

ASBESTOS PARTICLES IN FOOD AND DRUGS

Notice of Proposed Rulemaking

The Commissioner of Food and Drugs has received a petition from the Center for Science in the Public Interest, 1779 Church Street NW., Washington, D.C. 20036, and the Environmental Defense Fund, 1525 18th Street NW., Washington, D.C. 20036, requesting promulgation of regulations under the Federal Food, Drug, and Cosmetic Act to prohibit the adulteration of food and drugs with asbestos. Petitioners request that the Commissioner publish in the Federal Register "immediately (within 30 days)" the following proposed regulations:

1. Subpart F of Part 121 is amended by adding the following section:

§ 121.133 Filters containing asbestos.

"Foods that have come into contact with filters made wholly or partially of asbestos may reasonably be expected to become contaminated with asbestos particles which may be injurious to health when ingested. Accordingly, any food or food additive produced, manufactured, processed or prepared using a filter made wholly or partially of asbestos shall be deemed to be adulterated in violation of section 402(a) of the Act."

2. Part 133 is amended by adding the following sections:

§ 133.133 Filters containing asbestos.

Drugs passed through filters made wholly or partially of asbestos may reasonably be expected to become contaminated with asbestos particles which may be injurious to health when injected or ingested. Accordingly, any drug or drug component produced, manufactured, processed or prepared using a filter made wholly or partially of asbestos shall be deemed to be adulterated in violation of section 401(a) of the Act.

§ 133.133 Talc containing asbestos.

Talc is a naturally occurring hydrous magnesium silicate which may reasonably be expected to be contaminated with asbestos particles. Asbestos particles may be injurious to health when ingested or injected. Accordingly, it is not considered good manufacturing practice to add talc, directly or indirectly, as a component in the production, manufacture, processing or preparation of any drug, unless the manufacturer or processor of the drug first demonstrates by appropriate tests that the talc so used is free of asbestos particles. Any drug or drug component containing talc which has not been demonstrated to be free of asbestos particles shall be deemed to be adulterated in violation of section 501(a) of the Act.

Petitioners also request that the Commissioner "immediately (within 30 days from the receipt of this petition)" promulgate as a final regulation a zero tolerance for asbestos particles in talc intended for use as a food additive, pursuant to the proposal published in the Federal Register of August 12, 1972 (37 FR 16407), and take whatever other action the Commissioner deems necessary to eliminate contamination of food and drugs with asbestos.

A complete copy of the petition and its attachments may be reviewed at the office of the Hearing Clerk, Food and Drug Administration, Rm. 6-86, 5600 Fishers Lane, Rockville, MD 20852, during working hours, Monday through Friday.

The Commissioner has carefully reviewed the petition, its attachments, and other available information, and has reached the following conclusions. Each conclusion indicates the source reference upon which the conclusion is based and copies of all referenced material are available from the office of the Hearing Clerk.

"Asbestos" is a generic term for a number of hydrated silicates that, when crushed or processed, separate into flexible fibers made up of fibrils. Although there are many asbestos minerals, only six are of commercial importance. Chrysotile, a tubular serpentine mineral, accounts for 95 percent of the world's production. The others, all amphiboles (crystals with 2 groups of metal ions), are amosite, crocidolite, anthophyllite, tremolite and actinolite. These asbestos minerals differ in their metallic elemental content, range of fiber diameters, flexibility, harshness, tensile strength, surface properties, and other attributes that determine their industrial uses and which may affect their respirability, deposition, retention, translocation and biologic reactivity (Ref. 1).

Many products such as cement, flooring, shingles, pipes, filters, textiles, etc., contain asbestos of one kind or another.

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28 JAN 1974

MEMORANDUM FOR: Executive Officer to the DDM&S

SUBJECT: OMB Request for Comment on Draft
Executive Order

1. In a memorandum dated 15 January 1974 Mr. Stanley Ebner, General Counsel in the Office of Management and Budget, requested Agency comment on a proposed Executive Order entitled "Occupational Safety and Health Programs for Federal Employees." The memo alludes to an October draft of this E.O. and requests comment by 31 January.

2. I have discussed Mr. Ebner's request with our OMB Examiner, Mr. James Oliver, who advises that CIA did not receive a copy of the October draft of the E.O. but was added to distribution of the later draft by Mr. Oliver, who felt the later version contained material of possible interest to us. At my request he checked Mr. Ebner's office to obtain an extension of the 31 January deadline, in view of the fact that we were reviewing the document for the first time. He reported that a formal reply might be delayed until sometime in February but that it would be of material help to the responsible officer in Ebner's office if we could let him know by 8 February if we have any major changes to suggest. Mr. Oliver would be our channel for getting this informal comment to Ebner's office.

3. Not having seen the basic document, I do not know whether the suggestion of an informal, preliminary response is realistic. At a minimum we have an 8 February deadline instead of 31 January, and if no objections are to be expressed, we can so advise Mr. Oliver by telephone on 8 February, letting the written response follow at a later date.

4. We request that any informal comment and the final, formal response be submitted via this Office and its established channel to OMB.

STATINTL



Chief, Management & Services Group
Office of the Comptroller

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EXECUTIVE SECRETARIAT

Routing Slip

TO:	ACTION	INFO	DATE	INITIAL
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17 Asst/DCI				
18 AO/DCI				
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less enclosures

SUSPENSE	Date
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Remarks: To 6: You may want to touch base with 10 or 13 and get some relief on the 31 Jan deadline.

74-0254

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Executive Registry
74-453

January 15, 1974

Honorable William E. Colby
Central Intelligence Agency
Washington, D. C. 20505

Dear Mr. Colby:

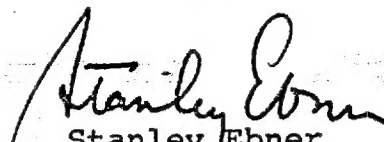
Herewith, in accordance with the provisions of Executive Order No. 11030, as amended, is a proposed Executive order entitled "Occupational Safety and Health Programs for Federal Employees" together with certain related documents.

On October 18, 1973, I requested agency comments on an earlier draft of this proposed Order. In view of the nature and scope of the comments received, that proposed Order was returned to the Department of Labor for reconsideration in light of those comments.

The Department of Labor has submitted a revised draft of the proposed Order. They have also submitted answers to a series of questions, prepared in this Office, concerning the manner in which they visualized the Occupational Safety and Health Program would operate if this proposed Order is issued.

On behalf of the Director of the Office of Management and Budget, I would appreciate receiving any comments that you may have concerning this revised proposed Executive order by January 31, 1974.

Sincerely,


Stanley Ebner
General Counsel

Enclosures

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20210



11 JAN 1974

JAN 10 1974

Stanley Ebner, General Counsel
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Ebner:

The Department of Labor has completed its review of the comments received by your office from other agencies and from the appropriate operating divisions of OMB on the proposed Executive order entitled "Occupational Safety and Health Programs for Federal Employees," which this Department, in our letter to Mr. Ash on October 16, 1973, has recommended for adoption to supersede Executive Order No. 11612.

Many of the comments on the proposed order expressed confusion as to its intended effect upon the administrative structure within the agency that will carry out the agency safety and health program, upon the agency budgetary process, upon related programs in the Federal sector such as collective bargaining practices and the provision of medical and related health services, and upon the role of the Department of Labor in the Federal program. After a thorough review of these comments, we have revised the language of the proposed order to clarify these matters.

Enclosed is a copy of the revised version of the proposed Executive order, dated December 14, 1973, and seven (7) copies as required by law. Also enclosed is our detailed response to the questions raised by Mr. G. Phillips Hanna, Chief, Labor/Manpower Branch, Human Resources Division of OMB. We are enclosing for Mr. Hanna, a copy of the digest of a report by the GAO on Federal agency safety and health programs, which has played a significant role in formulation of this proposed Executive order, and a copy of our proposed regulatory guidelines, 36 FR 27070. Finally, we are enclosing for your perusal several statements received by this Department from labor unions which are parties to collective bargaining agreements with Federal agencies, expressing support for adoption of the proposed Executive order.

2

We appreciate the opportunity which you have provided for us to review the agency comments on the proposed Executive order, and the opportunity to undertake necessary clarification. We also appreciate the expedited manner in which this matter is being handled, and we hope that the proposed Executive order can soon be presented to the President for his signature.

Sincerely,

A handwritten signature in dark ink, appearing to read "William J. Kilberg", written in a cursive style.

William J. Kilberg
Solicitor of Labor

Enclosures